

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BRENDA J WATTS**

Claimant

**APPEAL NO: 07A-UI-04597-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WATTS VAULT & MONUMENT CO**

Employer

**OC: 01/28/07 R: 03  
Claimant: Respondent (1R)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 27, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 22, 2007. Claimant participated. Employer participated through Lyndal Watts and was represented by Mary Funk, Attorney at Law. Employer's Exhibits 1 and 2 were received.

**ISSUE:**

The issue is whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed until January 24, 2007 when she was separated from employment. That separation has not yet been investigated or determined. Sometime between March 1 and April 1, 2007, she (daughter-in-law of employer) and her husband Greg Watts, opened Watts Family Monument in their home and later moved to a storefront location. The business advertised office hours of 9 a.m. to 4 p.m. (Employer's Exhibit 2) The storefront is not necessarily open those hours but a sign on the door indicates a phone number to call for inquiries. Claimant works between 12 and 20 hours per week at the business and is available for and participates in job interviews and work searches. She checks phone messages on nights and weekends and has a friend volunteer to work unpaid hours as needed. Greg handles any business appointment schedule conflicts claimant might have with her work searches or interviews. Greg also works part time at Cargill. No one receives wages for the business.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Inasmuch as claimant does not devote the majority of the work week to self employment with Watts Family Monument, she makes at least two in-person work searches per week and is willing to accept suitable work (as defined in the Facts About Unemployment booklet) she is considered available for work. Accordingly, benefits are allowed.

**DECISION:**

The April 27, 2007, reference 01, decision is affirmed. The claimant is able to work and available for work effective January 28, 2007. Benefits are allowed.

**REMAND:**

The separation issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs