

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA SIGMUND
Claimant

APPEAL NO. 07A-UI-03300-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLIDAY INN & SUITES-COUNCIL BLUFFS
Employer

**OC: 01/07/07 R: 01
Claimant: Appellant (2)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Linda Sigmund (claimant) appealed an unemployment insurance decision dated March 22, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was not available to work for Holiday Inn & Suites – Council Bluffs (employer) for the two-week period ending March 3, 2007. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2007. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was able and available to work for the two-week period ending March 3, 2007?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed with Holiday Inn & Suites of Council Bluffs. She was medically unable to work for two days during the two-week period ending March 3, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

Iowa Code section 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 24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The evidence demonstrates the claimant was unable to work for two days during the two-week period ending March 3, 2007. She was available to work the major portion of both weeks. The claimant does meet the availability requirements of the law for the two-week period ending March 3, 2007 and is entitled to benefits for that same time-frame.

DECISION:

The unemployment insurance decision dated March 22, 2007, reference 01, is reversed. The claimant was available for work for the two-week period ending March 3, 2007. The claimant qualifies for benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw