

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL L NEBINGER
Claimant

APPEAL NO. 13A-UI-12036-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DAVENPORT COMMUNITY
SCHOOL DISTRICT**
Employer

OC: 09/15/13
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, April Nebinger, filed an appeal from a decision dated October 16, 2013, reference 01. The decision found her ineligible to receive unemployment benefits as she was not able and available for work. After due notice was issued, a hearing was held by telephone conference call on November 19, 2013. The claimant participated on her own behalf. The employer, Davenport Community School District (Davenport), did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

April Nebinger began employment with Davenport in January 2013 as a part-time para educator working 32 hours per week. She did not file her claim for benefits until September 15, 2013, a month after she had returned to work at 36 hours per week. The number of hours was reduced in mid-September to between 30 and 32 hours per week and she remains in that capacity as of the current date.

REASONING AND CONCLUSIONS OF LAW:

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Ms. Nebinger did not file her claim for benefits until she had returned to work as a part-time para educator. It is noted other employees of the school district filed their claims at the beginning of the period between the successive academic years because they would no longer be employed in the new school year in the same capacity as during the previous year.

But in the claimant's case, she is currently working sufficient hours to be considered employed in the labor market. During the course of her claim year to date, she has not been on a period of unemployment between successive academic years.

DECISION:

The representative's decision of October 16, 2013, reference 01, is affirmed. April Nebinger is not eligible for unemployment benefits as she is not able and available for work due to being employed sufficient hours every week to remove her from the labor market.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css