

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WENDY J SMITH**  
Claimant

**APPEAL NO. 07A-UI-03628-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES – MARSHALLTOWN**  
Employer

**OC: 02/25/07 R: 02**  
**Claimant: Appellant (2-R)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 5, 2007, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 24, 2007. Claimant participated. Employer participated through Nancy Mullaney.

**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's vehicle was operable for commutes of up to 26 miles one-way. She did not want to continue working for Temp Associates of Marshalltown because of her concerns about the Belle Plain assignment, but told the fact-finder and Nancy Mullaney of the Grinnell office she did not want to drive the distance from Montezuma from Newton because of gas prices, the time, and the number of miles on her car. She has not worked in the Montezuma area before but she did work in Belle Plain, which is 54 miles from Newton. Claimant advised employer she was willing to work in Newton or Colfax areas and would be willing to work in Marshalltown if she moved there.

**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.

Claimant's vehicle was in working order to the extent that she had transportation available for shorter commutes than 54 miles one-way and indicated a willingness to work in Newton or the Colfax area, about 26 miles one-way. Accordingly, benefits are allowed.

**DECISION:**

The April 5, 2007, reference 03, decision is reversed. The claimant is able to work and available for work effective February 25, 2007. Benefits are allowed.

**REMAND:**

The separation and work refusal issues 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/kjw