

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAY E DOMINGUEZ**  
Claimant

**APPEAL NO. 10A-UI-15574-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JAI GANESH INC**  
Employer

**OC: 10/03/10**  
**Claimant: Respondent (4)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

Jai Ganesh, Inc., doing business as Heartland Inn, filed an appeal from a representative's decision dated November 4, 2010, reference 01, which allowed benefits to Kay Dominguez but denied the employer relief from charges. After due notice was issued, a hearing was held by telephone on January 7, 2011. Ms. Dominguez participated personally. The employer participated by Julie Moser, General Manager, and Kalpesh Patel, Owner.

**ISSUE:**

At issue in this matter is whether Ms. Dominguez satisfies the availability requirements of the law. A secondary issue is whether the employer should be relieved of charges.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Dominguez has been employed at Heartland Inn since 2004. The current owners acquired the property on September 28, 2009. Ms. Dominguez was working part time in housekeeping at the time of acquisition and continues to work part time. She usually works Friday, Saturday, and Sunday for six to seven hours each day.

Ms. Dominguez filed a claim for job insurance benefits effective October 3, 2010 because she was getting fewer hours than before. For the two-week pay period ending October 16, she had 27.5 hours; period ending October 30, 37.9 hours; period ending November 13, 14.8 hours; period ending November 27, 9.9 hours; period ending December 11, 13.6 hours; and for the period ending December 25, zero hours. As of the date of the hearing, January 7, she had worked 7.6 hours through January 2. The employer did not anticipate having additional hours for her for the two-week pay period ending January 8.

Ms. Dominguez' reduced hours during the winter months was attributed to low census in the hotel. It is anticipated that her regular hours will not be restored until April or May of 2011. According to Ms. Dominguez' base period wage credits, she received substantially less in wages during the fourth quarter of 2009 and the first quarter of 2010 than she did during the third quarter of 2009 and the second quarter of 2010.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether Ms. Dominguez satisfies the availability requirements of Iowa Code § 96.4(3). Although she is working a reduced workweek, she remains available to work her normal hours for the employer. The evidence of record does not identify any other matters that would affect her availability for work. For the above reasons, it is concluded that she satisfies the availability requirements of the law.

The next issue is whether the employer should be relieved of charges. An employer is entitled to a relief from charges if it is currently providing the same employment as it did during the base period of the claim. Iowa Code § 96.7(2)a(2). Based on the base period wage credits for Ms. Dominguez, the administrative law judge concludes that she historically works fewer hours during the winter months when the hotel's census is lower. As such, it is concluded that the employer is providing her with the same employment as it did during her base period. Therefore, the employer will be relieved of charges. Workforce Development should be notified if there is a change in Ms. Dominguez' work status.

**DECISION:**

The representative's decision dated November 4, 2010, reference 01, is hereby modified. Ms. Dominguez is allowed benefits, provided she is otherwise eligible, as she is available for work. Jai Ganesh, Inc. is relieved of benefit charges as it is providing the same employment it did during the base period of the claim.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs