

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAUNITA GARCIA
Claimant

APPEAL NO. 10A-UI-08567-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC
Employer

OC: 05-02-10
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 10, 2010, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 3, 2010. The claimant participated in the hearing with Interpreter Ike Rocha. Connie Ingraham, Vice-President of Administration and Finance, and David Bergeson, Product Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began her employment with Webster City Custom Meats as a full-time lead worker in the pack off department February 4, 2008. The employer's sales dropped after Easter and, consequently, the employer discharged eight employees so there would be enough work for the remaining employees. The employer was not working Tuesdays, because it was slow, until management met May 14, 2010, and decided to schedule all employees rather than making Tuesdays voluntary. When production was not running on Tuesdays prior to May 14, 2010, employees were encouraged to ask their supervisor for additional work and if they did not have any, they were to go to Product Manager David Bergeson and he would find work for them so they could get their 40 hours per week in. The claimant worked 28.44 hours the week ending May 9, 2010, and 30.52 hours the week ending May 16, 2010. She did not ask Mr. Bergeson for further work either of those weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able and available for work.

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.

The claimant was working to such an extent that she effectively removed herself from the labor market during each of the weeks she made a claim for unemployment benefits. Additionally, she could have had more hours if she had requested them from Mr. Bergeson. Under these circumstances, the administrative law judge must conclude the claimant is not able and available for work as that term is defined by Iowa law and therefore benefits must be denied.

DECISION:

The June 10, 2010, reference 01, decision is affirmed. The claimant is not eligible for unemployment insurance benefits, because she was not available for work in the labor market to the extent required to be considered available for work.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw