

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CHRISTEN D AVERY
1906 JERSEY RIDGE RD
DAVENPORT IA 52803**

**RION LLC – KRISPY KREME
C/o TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007**

**Appeal Number: 05A-UI-06571-CT
OC: 05/22/05 R: 04
Claimant: Respondent (4-R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available
Section 96.7(2)a – Relief of Charges

STATEMENT OF THE CASE:

Krispy Kreme filed an appeal from a representative's decision dated June 14, 2005, reference 01, which allowed benefits to Christen Avery but denied the employer relief from benefit charges. After due notice was issued, a hearing was held by telephone on July 12, 2005. The employer participated by Lori Cesalski of Talx UC Express. Mr. Avery did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Avery began working for Krispy Kreme on July 17, 2003 as a full-time production worker. He was hired to work 40 hours each week. In approximately March of 2005, Mr. Avery voluntarily reduced his hours because he accepted full-time work elsewhere. He could have continued to work 40 hours each week for Krispy Kreme. He remained with Krispy Kreme and worked one day each week for eight hours. The employment ended on June 20, 2005.

Mr. Avery filed a claim for job insurance benefits effective May 22, 2005 after he became separated from full-time employment with Norcross Safety Products.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Avery is available for work as required by Iowa Code section 96.4(3). There is no evidence that he is not currently available to work full-time hours. When he initially filed his claim for job insurance benefits, he was still working for Krispy Kreme on a part-time basis but remained available to accept full-time work. Accordingly, it is concluded that Mr. Avery has satisfied the availability requirements of the law at all times since filing his claim.

The next issue is whether Krispy Kreme should be relieved of charges for benefits paid to Mr. Avery. The provisions of Iowa Code section 96.7(2)a(2) allow an employer to be relieved of charges if a claimant is currently receiving the same employment as was received during the base period of the claim. The administrative law judge believes this provision presupposes that the employer has taken no steps to change the nature or amount of employment received. In the case at hand, it was Mr. Avery's choice not to accept the same employment the employer had provided during the base period of his claim. Krispy Kreme is not responsible for either his unemployment or his underemployment. Because the employer continued to be willing to provide Mr. Avery with the same employment he had during the base period of his claim, the administrative law judge concludes they are entitled to the relief allowed under Iowa Code section 96.7(2)a(2).

For the reasons stated herein, benefits are allowed to Mr. Avery but shall not be charged to the account of Krispy Kreme. Mr. Avery is now completely separated from the employment. The issue of his separation has not been adjudicated by Workforce Development. This matter shall be remanded to Claims for an investigation and determination regarding his June 20, 2005 separation from employment.

DECISION:

The representative's decision dated June 14, 2005, reference 01, is hereby modified. Mr. Avery is allowed benefits, provided he is otherwise eligible, as he remains available for work. Krispy Kreme will not be charged for benefits paid effective May 22, 2005. This matter is remanded to Claims for an investigation regarding Mr. Avery's separation from his part-time employment with Krispy Kreme.

cfc/sc