

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLYSON D REYHONS
Claimant

APPEAL NO. 09A-UI-18906-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIKE'S RESTAURANT
Employer

OC: 10/18/09
Claimant: Respondent (1-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Mike's Restaurant, filed an appeal from a decision dated December 7, 2009, reference 03. The decision allowed benefits to the claimant, Allyson Reyhons. After due notice was issued a hearing was held by telephone conference call on January 28, 2010. The claimant participated on her own behalf. The employer participated by Payroll Clerk Teresa Linker.

ISSUE:

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

FINDINGS OF FACT:

Allyson Reyhons was employed by Mike's Restaurant beginning June 10, 2009 as a full-time server. This employer considers full-time to be between 25 and 35 hours per week. She filed a claim for unemployment benefits with an effective date of October 18, 2009 because her hours had been reduced due to business slow down. She was returned to her regular full-time schedule November 29, 2009, as far as the number of days per week, but not as many hours due to being frequently sent home early.

Her employment ended December 31, 2009, but no adjudication had been made on the separation.

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".

The claimant remained available for her regular full-time hours through the date of her separation. Although she was scheduled for the same number of days per week, she was not working the number of hours per week due to being sent home early. She was available to work the same number of hours as in her original contract of hire but those hours were not provided by the employer. Under the provisions of the above Code section, she is able and available for work.

The issue of her separation from this employment has not been determined and must be remanded.

DECISION:

The representative's decision of December 7, 2009, reference 03, is affirmed. Allyson Reyhons was able and available for work from the effective date of her claim through the date of separation on December 31, 2009.

The issue of the claimant's separation is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs