

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETTY M LUETHJE**

Claimant

**APPEAL NO. 11A-UI-05690-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRENDA J JENSEN**

**MID-IOWA COMMUNITY ACTION INC**

Employer

**OC: 06/27/10**

**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Betty Luethje, filed an appeal from a decision dated April 26, 2011, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 26, 2011. The claimant participated on her own behalf. The employer, Mid-Iowa Community Action (MICA), participated by Human Resources Manager Chuck Brewer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Betty Luethje was employed by MICA beginning August 21, 1976. In 2003, some time after she retired from her regular, full-time job at MICA, the employer contacted her about returning to work on an on-call/as-needed basis. She would be needed most during the period from September through April when the low income energy assistance program was very busy. After that period the amount of work would vary depending on the needs of the employer. She continues in that same status as of the current date.

**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".

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant is considered a part-time employee because her work depends solely on the personnel needs of the employer. Sometimes she is busier than at other times, but the work status has been the same for the past eight years. Under the provisions of the above Administrative Code section, she is not considered to be able and available for work and ineligible for unemployment benefits.

**DECISION:**

The representative's decision of April 26, 2011, reference 02, is affirmed. Betty Luethje is ineligible for benefits as she is not able and available for work

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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