

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

BRENDA A HANSEN
1925 KAUFMANN
DUBUQUE IA 52001

IHOP/TAGURA MGN WD
6461 BRANDYWOOD TRL
SUN PRAIRIE WI 53590

Appeal Number: 04A-UI-01158-HT
OC: 11/16/03 R: 04
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Brenda Hansen, filed an appeal from a decision dated January 26, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 24, 2004. The claimant participated on her own behalf. The employer, IHOP, participated by Owner Erin Boeger. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Brenda Hansen was employed by IHOP beginning in September 20, 2002, when the restaurant was owned by the corporate office. It was sold to a new owner effective September 25, 2003. The claimant was retained as a part-time employee. Ms. Hansen filed for unemployment benefits with an effective date of November 16, 2003, for partial unemployment. She has earned more than her weekly benefit amount for the weeks ending November 29 and December 6, 2003. For the first week ending November 22, 2003, she reported \$119.00 in wages and was paid \$12.00 in unemployment benefits. However, during that week she requested, and was given time off, on November 20, 2003, and was not available the entire week.

Since filing her claim she has been scheduled for more hours due to an increase in business.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is ineligible. The judge concludes she is.

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 was hired by the new owners as a part-time employee. The hours for which she is scheduled is based on the amount of work available, which is dependent on the volume of business. She received benefits for only one week, and she was not available for the entire week due to requesting a day off. Under the provisions of the above Code section, she cannot be considered to be able and available for work as she is still employed in the same capacity as she was hired, and the one week in which she received benefits, she was not available to the employer the entire time due to requesting time off.

DECISION:

The representative's decision of January 26, 2004, reference 01, is affirmed. Brenda Hansen is not eligible for benefits as she is not able and available.

bgh/kjf