

**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**

**LAURIE A BECHEN
1874 VIZALEEA DR
DUBUQUE IA 52002**

**THE BAR X INC
2616 WINDSOR AVE
DUBUQUE IA 52001**

**Appeal Number: 05A-UI-12215-DWT
OC: 03/27/05 R: 04
Claimant: Respondent (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 to and Available for Work

STATEMENT OF THE CASE:

The Bar X, Inc. (employer) appealed a representative's November 29, 2005 decision (reference 08) that held Laurie A. Bechen (claimant) eligible to receive unemployment insurance benefits as of October 31, 2005. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2005. The claimant participated in the hearing. The employer responded to the hearing notice and provided a phone number in which to contact the employer. This phone number was called, but no one answered the phone. A message was left for the employer to contact the Appeals Section immediately.

About 12:30 p.m. the employer contacted the Appeals Section for the 10:00 a.m. hearing. The employer made a request to reopen the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Is the claimant eligible to receive benefits as of October 31, 2005?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of March 27, 2005. Prior to filing her claim for benefits, the claimant sold her business, The Bar X, Inc., to Nancy Tigges. No one appealed a previous decision that concluded the claimant was eligible to receive benefits based on her employment separation from The Bar X, Inc.

The claimant started her own business with her daughter in May 2005. While the claimant and her daughter operated her new business, the Department did not consider her eligible to receive benefits because she was not available to work.

After operating the new business a few months, the claimant and her daughter could not meet their financial obligations. In late October, the business creditors required the claimant to pay money for her leases that she did not have. The claimant could not pay her creditors. Instead of seeking any money from the claimant, the creditors agreed the claimant could return the equipment she had leased and vacate the building. The claimant's business closed on October 31. The claimant reopened her claim during the week of October 31, 2005.

The employer received the hearing notice and properly responded by contacting the Appeals Section prior to the hearing. Although the employer was home on December 19, she was sleeping and did not hear the phone ring. The employer did not wake up until almost 12:30 p.m. The employer then immediately contacted the Appeals Section and requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

Even though the employer intended to participate in the hearing, the employer was not available at the time of the hearing. Since the employer was sleeping and did not hear the phone ring, she was not available for the hearing. Since the employer works nights, it was the employer's responsibility to make sure she was awake and available for the 10:00 a.m. hearing. Under the facts of this case, the employer did not establish good cause to reopen the hearing.

The law presumes a claimant is not available to work when she devotes time and effort to become self-employer. 871 IAC 24.23(8). The facts establish the claimant was not eligible while she worked at her business. Unfortunately, the claimant's efforts at becoming self-employed were not successful and her creditors "forced" her to end this venture. As of

October 31, the claimant is available to work and is eligible to receive unemployment insurance benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's November 29, 2005 decision (reference 08) is affirmed. As of October 31, 2005, the claimant is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

dlw/kjf