

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBYN S HEIDT**  
Claimant

**APPEAL NO. 07A-UI-06275-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BENNIGANS – CEDAR RAPIDS**  
Employer

**OC: 05/13/07 R: 03**  
**Claimant: Respondent (2-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, Bennigan's, filed an appeal from a decision dated June 14, 2007, reference 03. The decision allowed benefits to the claimant, Robyn Heidt. After due notice was issued, a hearing was held by telephone conference call on July 10, 2007. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Bookkeeper Janice Chapman, Service Manager Lance Warner and was represented by Unemployment Services in the person of Michelle Igney

**ISSUE:**

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

**FINDINGS OF FACT:**

Robyn Heidt began employment with Bennigan's on November 30, 2006. All employees indicate the hours they are available to be scheduled and she put down she was "open," meaning all days and all hours. On May 28, 2007, she changed her availability to state she must be off work no later than 2:00 p.m., Sunday through Thursday, and was available all day on Friday. Service Manager Lance Warner told her he could not guarantee she could leave at 2:00 p.m. every day and that she needed to be available at least two days to remain on the payroll. She modified her availability to Friday and Saturday, and unavailable Sunday through Thursday because she had another job and this would now be her part-time job.

Ms. Heidt's employment ended June 16, 2007. She filed a claim for unemployment benefits with an effective date of May 13, 2007, but the records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

**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 reduced her availability for work from all days and all hours to only two days per week. This was at her choice and when the employer accepted the change it formed a new contract of hire. She was working the same hours as agreed and under the provisions of the above Administrative Code section, was not able and available for work.

The issue of her separation from employment shall be remanded to the Claims Section for determination.

**DECISION:**

The representative's decision of June 14, 2007, reference 03, is reversed. The claimant was not able and available for work as she was working the hours as agreed.

The issue of the claimant's separation from employment is remanded to the Claims Section for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css