

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELAINE A BELCHER
Claimant

APPEAL NO. 11A-UI-12257-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BEATON INC
BURGER KING**
Employer

OC: 08/14/11
Claimant: Appellant (4)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Elaine Belcher filed a timely appeal from the September 12, 2011, reference 01, decision that denied benefits for the period of August 14, 2011 through August 27, 2011. After due notice was issued, a hearing was held on October 11, 2011. Claimant participated. Kathy Frerichs, controller, represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported by the claimant, benefits disbursed to the claimant, and the dates indicating when the claim was active.

ISSUES:

Whether the claimant was able to work and available for work during the period of August 14, 2011 through August 27, 2011.

Whether the claimant was temporarily unemployed or partially unemployed during the period of August 14, 2011 through August 27, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Elaine Belcher is employed by Beaton, Inc., doing business as Burger King as a part-time crewmember at the employer's Burlington restaurant. In August 2011, the employer temporarily closed the Burlington restaurant while the employer resurfaced the parking lot. The restaurant closed on Monday, August 15, 2011. The restaurant reopened for business on Thursday, August 25, 2011. The employer had Ms. Belcher start back on August 23, 2011 to assist with cleaning the restaurant. Ms. Belcher had remained available to perform work for the employer in Burlington while the Burlington restaurant was closed.

While the Burlington restaurant was closed, the employer wanted Ms. Belcher to go work at the Monmouth, Illinois store, approximately 30 miles away, or at the Muscatine store, approximately 45 miles away. Ms. Belcher had a car, but the car was not sufficiently reliable for her to use it as transportation to drive the distances employer wanted her to.

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".

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b). An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

Ms. Belcher was able to work and available for work at the Burlington store at all times while that store was closed. Ms. Belcher was not required to suddenly be available for work 30 to 45 miles further away in order to establish that she was available for work for unemployment insurance purposes. See 871 IAC 24.23(4). Ms. Belcher was temporarily unemployed during the benefit week that ended August 20, 2011 and was eligible for benefits for that week, provided she was otherwise eligible. Ms. Belcher returned to work toward the beginning of the week started August 21, 2011. At that point, she was no longer temporarily unemployed or partially unemployed, and was not eligible for benefits. The employer's account may be charged for the benefits disbursed to Ms. Belcher for the week ending August 20, 2011.

DECISION:

The Agency representative's September 12, 2011, reference 01, is modified as follows. The claimant was able and available for work, temporarily unemployed, and eligible for unemployment insurance benefits for the week ending August 20, 2011. Effective August 21, 2011, the claimant was no longer partially or temporarily unemployed, had returned to work, and no longer met the availability requirements to be eligible for unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw