

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE R FOSTER
Claimant

APPEAL NO. 09A-UI-17969-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRUEGGER'S ENTERPRISES INC
Employer

OC: 10/18/09
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Nicole Foster filed a timely appeal from the representative's decision dated November 24, 2009, reference 04, that denied benefits finding that the claimant was not able and available for work. After due notice, a telephone hearing was scheduled for and held on December 23, 2009. The claimant participated personally. The employer participated by Jim Nash, Area Manager and Hilda Clark, General Manager.

ISSUE:

At issue in this matter is whether the claimant is able and available for work within the meaning of the law.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: Nicole Foster began employment with Bruegger's Enterprises on October 6, 2009 and continues to be employed at the time of hearing. Ms. Foster was hired as a part-time line worker and was paid by the hour. At the time of hire the claimant was not guaranteed any minimum number of hours as a part-time employee.

Although hired part time with no guarantee of minimum hours for the claimant, the employer attempted to provide Ms. Foster as many working hours as were available. Ms. Foster's hours were reduced in October of 2009 at her personal request due to her pregnancy. The claimant considered quitting employment but did not do so. Upon further considering the matter, Ms. Foster elected to continue in her part-time employment choosing to work fewer hours each week. The claimant continues to be employed working reduced hours by her choice at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant has limited her availability by making herself unavailable for work. It does.

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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The parties do not dispute the fact that Ms. Foster is still employed by Bruegger's Enterprises Inc. under the same terms and conditions as originally hired. Inasmuch as the claimant was not guaranteed any minimum number of hours and has chosen to personally limit the number of hours that she will accept does not render her partially unemployed. Where an individual is working in a part-time job under the same terms and conditions as hired, he or she is not considered partially unemployed. 871 IAC 24.23(26).

The claimant's availability for work is also unduly limited because the claimant is not willing to work or available to work during the hours in which suitable work is available for the claimant.

DECISION:

The representative's decision dated November 24, 2009, reference 04, is hereby affirmed. The claimant is not available for work due to limitations she has imposed. The claimant is not

partially unemployed within the meaning of the law. The claimant is still employed at Bruegger's Enterprises in a part-time job with the same hours and wages available to her

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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