

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHELLE JOHANSEN**  
Claimant

**APPEAL NO. 07A-UI-04630-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LIBERTY FOOD SERVICE UNIT 1 LLC**  
Employer

**OC: 04-08-07 R: 01  
Claimant: Respondent (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 4, 2007, reference 04, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 15, 2007. The claimant participated in the hearing. Ann Storm, Human Resources and Barb Moritz, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cook for Liberty Foods from August 1, 2006 to March 27, 2007. She was discharged for misconduct and disqualified for benefits in Appeal Number 07A-UI-04321-ET. Consequently, while the claimant is able and available for work beginning May 1, 2007, the issue is moot because she is not eligible for unemployment insurance benefits.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work but is not eligible for benefits.

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".

The claimant was discharged for misconduct and disqualified for benefits in Appeal Number 07A-UI-04321-ET. Consequently, while the claimant is able and available for work beginning May 1, 2007, the issue is moot because she is not eligible for unemployment insurance benefits. Accordingly, benefits are denied.

**DECISION:**

The May 4, 2007, reference 04, decision is modified in favor of the appellant. The claimant is able to work and available for work effective May 1, 2007. Benefits were denied, however, in Appeal Number 07A-UI-04321-ET and as a result she is not eligible for unemployment insurance benefits.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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