

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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INVESTIGATION AND RECOVERY
IOWA WORKFORCE DEVELOPMENT
1000 EAST GRAND AVENUE
DES MOINES IA 50319

DAN ANDERSON, IWD

Appeal Number: 06-IWDUI-025
OC: 12/11/05
Claimant: Appellant (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 the department. 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)

February 17, 2006

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22(2) - Eligibility Conditions
871 IAC 24.23(7) - Self Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated January 18, 2006, reference 03, which held the claimant ineligible for benefits December 25, 2005, because the claimant does not meet the availability requirements of the law.

The hearing was held pursuant to due notice on February 14, 2006, by telephone conference call. The claimant participated. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development, Investigation and Recovery.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective December 11, 2005. After a fact-finding interview regarding a separation from employment issue, an issue arose regarding the claimant's availability for work. The department assigned Investigator Stroud to review the issue.

Stroud interviewed the claimant by telephone concerning the issue. The claimant is a physician assistant. The claimant stated she became self-employed, full-time with a business name of Schooler Medical Professionals that opened to the public on December 27, 2005. The claimant's work schedule is 8:00 am. to 5:00 pm., Monday through Friday. The claimant treats about ten patients each day.

REASONING AND CONCLUSIONS OF LAW:

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

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 24.22(96) Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(2) *Available for work.*

871 IAC 24.23(96) Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(7) Where an individual devotes time and effort to becoming self-employed.

The administrative law judge concludes that the claimant is not eligible for unemployment benefits effective December 25, 2005, as she began devoting her time and efforts to self-employment pursuant to the law sections cited above. The department gave the claimant some leeway in not imposing the disqualification until the claimant opened her business to the public, and she began treating patients on December 27, 2005. The claimant admits that she was working full-time, and scheduled for forty-hours a week while treating some ten patients each day.

DECISION:

The decision of the representative dated January 18, 2006, reference 03, is **AFFIRMED**. The claimant is not eligible for unemployment benefits effective December 25, 2005, due to her self-employment.

rls