

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JOANNE M HEYING
2390 ODESSA AVE
NEW HAMPTON IA 50659**

**MDK INC
19 N LOCUST AVE
PO BOX 263
NEW HAMPTON IA 50659**

**Appeal Number: 04A-UI-04145-DWT
OC 10/12/03 R 03
Claimant: Respondent (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 are 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 Workforce Development. 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)

(Decision Dated & Mailed)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

MDK, Inc. (employer) appealed a representative's April 2, 2004 decision (reference 02) that concluded Joanne M. Heying (claimant) was eligible to receive unemployment insurance benefits even though she was self-employed because she was still available to work the same hours in which she earned her base period wages. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 5, 2004. The claimant participated in the hearing with her attorney, Patrick McGraw. Steve Dibble, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

After the claimant became self-employed is she able to and available for work?

FINDINGS OF FACT:

The claimant worked about a year for the employer. She worked 8:00 a.m. to 5:00 p.m. The employer is in the recycling business and the claimant started her own recycling business in early January 2004.

The employer received reports from its business clients that the claimant had contacted them during regular business hours to solicit them for business and contracted with them for their business. Since the claimant earned money from self-employment and made job contacts between 8:00 a.m. and 5:00 p.m., the employer did not believe the claimant was available to work for other employers.

When the claimant filed weekly claims she made her two in-persons job contacts in an attempt to become reemployed. She worked out of her home and was available to answer calls from potential employers who might call her about a job. The claimant had nothing preventing her from reporting for a full-time job immediately. When the claimant made business-related calls with prospective clients, she worked from her home two to ten hours a week. Since the claimant was not employed, she could have contacted prospective clients between 8:00 a.m. and 5:00 p.m.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code §96.4-3. The law does not require a claimant to report any income she earns from self-employment. Even though the claimant became self-employed in early January 2004, she must be able to and available for full-time work during weeks she files a claim for benefits. The fact the claimant worked a maximum of ten hours a week, at her own business at her home, does not make her unavailable to work for unemployment insurance purposes. The facts indicate the claimant could have accepted a full-time, 8:00 a.m. to 5:00 p.m. job immediately. A preponderance of the evidence establishes the claimant was able to and available for work since early January 2004, when she started her own business.

DECISION:

The representative's April 2, 2004 decision (reference 02) is affirmed. The claimant remains eligible to receive unemployment insurance benefits because she is able to and available for work, even after she became self-employed in early January 2004.

dlw/b