

**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**

**VALERIE J WORBY
608 FAIRCHILD ST
CORALVILLE IA 52241**

**KOHL'S DEPARTMENT STORES INC
c/o JON-JAY ASSOCIATES
PO BOX 182523
COLUMBUS OH 43218**

**Appeal Number: 04A-UI-01007-B4T
OC: 08-17-03 R: 03
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 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 – Whether Claimant is Able and Available for Work

STATEMENT OF THE CASE:

Valerie J. Worby appealed from an unemployment insurance decision dated January 20, 2004, reference 02, that held, in effect, the claimant was not eligible to receive unemployment insurance benefits because the records indicated she was not willing to work during the times when work in her occupation is often done. This unduly limited the claimant's availability and she did not meet the availability requirements of the law. Benefits were denied effective November 23, 2003.

A telephone conference hearing was scheduled and held on February 14, 2004. Valerie J. Worby participated following a late call. Mike Jones, Assistant Store Manager in Personnel Operations, participated on behalf of Kohl's Department Stores, Inc.

Official notice was taken of the unemployment insurance decision, bearing reference 02, together with the pages attached thereto (9 pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Valerie J. Worby was employed at Kohl's Department Stores, Inc. in Coralville, Iowa, on October 8, 2003. The claimant was hired as a full-time department supervisor of the Misses Department. As a department supervisor, the claimant was required to work on the weekends which ended up being a full-time job for the claimant. During the tenure of her employment, several weeks prior to November 30, 2003, the claimant held a conversation with Mike Jones, Assistant Store Manager. The claimant indicated that she had medical problems with children at home and would be unable to work on the weekends and requested to work as a part-time employee. Following some discussion, it was agreed that the claimant continue in her employment as a part-time employee and was not required to work on weekends.

The claimant continued in her employment under the accommodation of Mark Jones as a part-time employee until December 30, 2003 when she left to accept another job.

The claimant filed an initial claim for benefits having an effective date of August 17, 2003. The claimant filed claims for benefits and received benefits up through the benefit week ending October 11, 2003. The claimant continued filing claims for benefits but was earning wages which precluded her, for the most part, from receiving benefits through November 22, 2003.

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".

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The evidence in the record clearly establishes that the claimant was initially employed as a full-time department supervisor and was required to work certain hours on the weekend. Because of medical problems affecting her child at home, the claimant requested part-time employment approximately two weeks prior to November 30, 2003. The claimant was accommodated by Mike Jones, Assistant Store Manager, and placed on part-time employment because she was not available for her full-time job as a department supervisor. Work was available to the claimant as a full-time employee had she chosen to remain in that position and perform the job duties assigned to her. The claimant is presently working in a part-time job at the same hours and wages as contemplated when she was authorized to reduce her hours at her request. The claimant is, therefore, not working on a reduced work week basis different from the contract of hire and cannot be considered partially unemployed following November 30, 2003.

The administrative law judge concludes that Valerie J. Worby is not eligible to receive unemployment insurance benefits effective November 23, 2003 because she is found not able and available for work under the provisions of the Iowa Code Section 96.4-3.

DECISION:

The unemployment insurance decision dated January 20, 2004, reference 02, is affirmed. Valerie J. Worby is not eligible to receive unemployment insurance benefits effective November 23, 2003 because she does not meet the availability requirements of the law.

tjc/b