

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA M CAPSEL
Claimant

APPEAL NO. 06A-UI-09719-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MID IOWA DEVELOPMENT ASSOCIATES
REGIONAL PLANNING**
Employer

**OC: 09/18/06 R: 01
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Donna Capsel (claimant) appealed a representative's September 28, 2006, reference 05, decision that concluded she was not eligible to receive unemployment insurance benefits because she was still employed with Mid Iowa Development Associates Regional Planning (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2006. The claimant participated personally. The employer participated by Clifford Weldon, Assistant Director. Sharon Porter and Toni Schmalen observed the hearing. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 17, 2006, as a part-time bus driver. As a driver, she was required to fill the bus with gas at Doc's Stop, the only station with which the employer had an account in the town the claimant drove.

During the summer of 2006, the claimant's mother wrote the claimant a check for \$100.00. Unbeknownst to the claimant, the check was written on a closed account. The claimant cashed the check at Doc's Stop. On June 20, 2006, the owner of Doc's Stop sent a certified letter to the claimant notifying her that she would not be allowed on Doc's Stop premise but did not list a reason for the prohibition. On July 5, 2006, the claimant paid all fees associated with the cashing of the check. The employer could not have the claimant drive the bus in her local town. The employer sent the claimant to a nearby community to drive for the week ending August 17, 2006. The employer has not had work for the claimant since August 17, 2006. Continued work is available if the Doc's Stop allowed the claimant on its property.

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.

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 claimant was hired as a full-time worker and is not still working for the employer because the employer has not scheduled her to work. The claimant was restricted from using the gas station due to reasons which were not work related. The claimant is able and available for work but the employer has not scheduled her. She is eligible to receive unemployment insurance benefits because she is available for work.

DECISION:

The September 28, 2006, reference 05, decision is reversed. The claimant is able to work and available for work. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw