

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRY L VOGT**  
Claimant

**APPEAL NO. 07A-UI-02255-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALSH ENTERPRISES INC  
CORK & BOTTLE**  
Employer

**OC: 01/21/07 R: 03  
Claimant: Appellant (4)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 28, 2007, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 21, 2007. Claimant participated. Employer participated through Jane Shank.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired in August 2006 to work 20 hours per week nights and weekends. Her hours briefly and temporarily increased when another employee quit. She also works for others when hours are available. She believes her hours were cut to about three days or 16 hours per week in December 2006 but the schedule since she filed her claim was as follows: the week beginning January 21, 16.3 hours; January 28, 21 hours; February 4, 19.3 hours; February 11, 17.1 hours; February 18, 23 hours; February 25, 22.5 hours with one day requested off; March 4, 18.2 hours with one day requested off; March 11, 26 hours; and March 18, 12 hours with two days requested off.

**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 during the weeks she does not request time off and is scheduled fewer than 20 hours as contemplated in the contract of hire.

Iowa Code § 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".

For the most part employer is providing the hours as agreed at the time of hire except during the weeks beginning January 21 and February 11. The week of February 4 was in substantial compliance with the hours claimant historically worked. Thus, claimant is eligible for partial unemployment insurance benefits for the weeks ending January 27 and February 17, 2007. Since claimant asked for time off the other weeks in which she did not work 20 hours, that reduction in employment was of her own volition and she is not eligible during those weeks. Accordingly, benefits are allowed for the aforementioned two weeks and for any prospective week in which she does not request time off but is scheduled to work fewer than 20 hours.

**DECISION:**

The February 28, 2007, reference 03, decision is modified in favor of the appellant. The claimant is eligible for partial benefits for the weeks ending January 27, 2007 and February 17, 2007, but is otherwise ineligible unless she has not requested time off and is not scheduled for 20 hours per week.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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