

**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**

**JENNIFER L ENDELMAN
113 – 5TH AVE SW
WAVERLY IA 50677**

**MCSOIFERS INC
1010 S GRAND AVE
CHARLES CITY IA 50616**

**Appeal Number: 04A-UI-12081-LT
OC: 10-10-04 R: 03
Claimant: Appellant (4)**

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 - Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 4, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 3, 2004. Claimant did participate. Employer did participate through Sam Soifer and Chris Kramer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time cook at McDonalds from September 28 through November 9, 2004 when she was fired. As of October 9 claimant's doctor said she was to work no more than 20 to 25 hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work for more than 20 to 25 hours per week from October 9 through November 9, 2004.

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(1)a provides:

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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as employer provided claimant with the maximum number of hours per week that her medical restrictions offered, claimant was not medically able to work more hours and was not partially unemployed. Benefits are withheld from October 9 through November 9, 2004, the date of separation, which is adjudicated separately. Since a separation from employment occurred on November 9 and the medical restrictions expired on November 9, and she was thereafter able to work at some full-time employment, even if she would not have been able to continue working more than 25 hours standing while at McDonald's. Thus claimant became

able to and available for work effective November 9, 2004 as of the expiration of her medical restrictions and her separation from employment.

DECISION:

The representative's decision dated November 4, 2004, reference 01, is modified in favor of the appellant. The claimant was not able to work more than the 20 to 25 hours per week her employer provided in compliance with her medical restrictions from October 10, 2004 through November 9, 2004. Benefits are withheld for that period of time and are allowed effective November 9, 2004, provided claimant is otherwise eligible.

dml/tjc