

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

ANELDA PETERSON  
1126 – 5<sup>TH</sup> AVE  
COUNCIL BLUFFS IA 51501

NO FRILLS SUPER MARKET INC #666  
1867 N 81<sup>ST</sup> ST  
OMAHA NE 68114

Appeal Number: 04A-UI-01006-SWT  
OC 12/14/03 R 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 28, 2004, reference 01, that concluded she was not available for work. A telephone hearing was held on February 23, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeff Chmelka participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant has worked as a cashier for the employer since August 25, 2002. She was not guaranteed any specific number of hours or days of work but generally worked 25 to 38 hours per week. Employees are informed at the time for hire that they are expected to be available all shifts. The claimant was initially available to work all shifts but later informed the employer that she could not work past 5:00 or 6:00 p.m. because of childcare concerns, which served to limit her availability for work.

In August 2003, the claimant was moved to working in the recycling redemption center on a temporary basis. The redemption center hours were more suited to her hours of availability so the claimant was working close to 40 hours per week up through November 24, 2003, when the person in charge of the redemption moved back to his job. The claimant's hours went down as she moved back into the cashier position.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 14, 2003. On January 8, 2004, the claimant submitted a statement to the employer stating that she only wanted to work in the redemption center and that she only wanted to work three days per week. This restriction on top of the restriction on how late she could work further reduced her hours so that she was not working the normal 25 to 38 hours per week.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as defined by the unemployment insurance law in Iowa Code Section 96.4-3.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The evidence establishes that the reason the claimant's schedule was reduced was due to the restrictions the claimant placed on her availability to work and communicated to the employer. If the claimant clearly communicates to the employer that she is fully available for work, yet the employer fails to provide her with her normal 25 to 38 hours per week of work, she should reapply for benefits and show that she has placed no restrictions on her availability to work but the employer has not restored her to her normal hours.

Pursuant to the rule recite above, the claimant is considered unavailable for work. The claimant is disqualified effective December 14, 2003, and continuing until she reapplies for benefits and establishes that she is available for suitable work.

#### DECISION:

The unemployment insurance decision dated January 28, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she reapplied for benefits and shows she is available for work.

saw/kjf