

**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**

**MICHELLE L BLOYER
42543 – 180TH ST
UTE IA 51060**

**MONGOOSE INC
MCDONALD'S RESTAURANT
315 – 10TH ST
ONAWA IA 51040-1105**

**Appeal Number: 06A-UI-04846-LT
OC: 01-01-06 R: 01
Claimant: Appellant (1R)**

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)

Iowa Code section 96.4(3) - Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the May 2, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 22, 2006. Claimant participated. Employer did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time Monday through Friday 9 a.m. to 3 p.m. through March 18, 2006. She applied for a management position and was then off work for one week under medical care due to back pain from March 19 through 25, 2006. She was released to full duty without restriction as of March 26. She returned on March 28 and spoke to Michelle, manager, and told her she could work 9 a.m. to 3 p.m. full time Monday through Friday if a management job were given to

her until the school year ended at which time she could work any hours (including next school year because she could get child care). Employer did not award her the management job so she told employer she would only work Monday through Friday 9 a.m. to 3 p.m.

She did not return after March 28 and did not attempt to reach the owner but began looking for full time management employment opportunities elsewhere. The separation has not yet been addressed at the claims level.

She had previously worked at Casey's as a full time manager until her separation in January 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work or available for work.

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, (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor

market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.23(3), (16) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

(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.

Claimant was not able to work from March 19 through 26, 2006, due to medical treatment for a non-work related injury. Since claimant did not continue to work her regular part time hours upon her release because employer declined to make her manager, she did not make herself available for work. Accordingly, benefits are denied.

DECISION:

The May 2, 2006, reference 02, decision is affirmed. The claimant is not able to work and available for work effective March 26, 2006. Benefits are denied.

REMAND:

The March 28, 2006 separation issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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