

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KYLIE R MEIER**  
Claimant

**APPEAL NO: 08A-UI-01388-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AADG INC**  
**CURRIES – GRAHAM**  
Employer

**OC: 09/23/07 R: 02**  
**Claimant: Appellant (4)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

Kylie R. Meier (claimant) appealed a representative's October 23, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with AADG, Inc. / Curries - Graham (employer) because of a conclusion she was not able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-01387-DT. The claimant participated in the hearing with one other witness, Scott Meier. Dan McGuire appeared on the employer's behalf with one other witness, Jeff Neuwohner. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

A representative's decision was issued on October 17, 2007 (reference 01) which disqualified the claimant as of April 27, 2007 due to what was determined to be a voluntary quit without good cause attributable to the employer; the disqualification was to remain in place until such time as the claimant had requalified by earning ten times her weekly benefit amount in insured wages from another employer. The representative's decision in this case, dated October 23, 2007, was a week-to-week disqualification indicating that the claimant was not able and available for work as of September 23, 2007, but that she could remove that disqualification in the future by providing evidence that she was recovered and able to work. This second decision was mailed to the claimant's last-known address of record on October 23, 2007. The claimant testified that she did not receive that decision, that she only received the decision disqualifying her on the separation from employment. The able and available decision contained a warning that an appeal must be postmarked or received by the Appeals Section by

November 2, 2007. The only appeal which was filed was the one filed for both disqualification decisions on February 6, 2008, which is after the date noticed on the disqualification decision.

In the concurrently issued decision in 08A-UI-01387-DT the administrative law judge concluded that the claimant's appeal from the October 17, 2007 (reference 01) separation disqualification decision was not timely nor had legal grounds been provided under which the appeal could be treated as timely. The claimant had established an unemployment insurance benefit year effective September 23, 2007. Her weekly benefit amount was calculated to be \$315.00. The claimant had other full time and part time employment in November and December 2007 and in January 2008.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant's requalification amount is \$3,150.00. Since the separation disqualification remains in effect until the claimant earns requalifying wages and that disqualification was in effect as of September 23, even if the claimant did not receive the October 23, 2007 decision at all, she would still not be eligible for benefits for the week of September 23 and the following weeks. Therefore, a determination as to whether the claimant was fully unable and unavailable for work beginning September 23 and the weeks thereafter is moot. Given that she did obtain and engage in some employment in November and December 2007 and in January 2008, she was obviously able and available for work during that time.

**DECISION:**

The representative's October 23, 2007 decision (reference 02) is modified in favor of the claimant. Even though the claimant became able and available for work at least by some time in November 2007, she was not eligible to receive unemployment insurance benefits effective September 23, 2007 due to the separation disqualification. At the point the claimant reaches the level of having earned requalifying wages after her separation from employment from this employer, the October 23, 2007 decision shall not be determinative of the claimant's availability status. Upon requalification the claimant will be eligible to receive unemployment insurance benefits, if she is then otherwise qualified.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/pjs