

**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**

**SHAWNA L DEUELL
1028 CHALMERS AVE
WATERLOO IA 50701**

**COMMUNITY UNITED
CHILD CARE CENTERS INC
c/o ADMIN OFFICE
1026 3 SEERLEY BLVD
CEDAR FALLS IA 50613**

**Appeal Number: 06A-UI-07734-JTT
OC: 06/25/06 R: 03
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, 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
Section 96.4(3) – Still Employed Same Hours and Wages

STATEMENT OF THE CASE:

Shawna Deuell filed a timely appeal from the July 25, 2006, reference 01, decision that denied benefits for the period of June 25-July 1, 2006. After due notice was issued, a hearing was held on August 17, 2006. Ms. Matson participated. Human Resources Director Jay Mattson represented the employer. The administrative law judge took official notice of the Agency's administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shawn Deuell commenced her employment with Community United Child Care Centers in May 2004

and was a full-time caregiver at the time she commenced a medical leave of absence, pursuant to the Family and Medical Leave Act (FMLA) on May 11, 2006. Ms. Deuell had suffered a back injury outside work and needed to progress through a program of physical therapy before she would be able to return to work. At the time the leave was requested and approved, Ms. Deuell and the employer discussed a tentative return date of June 16, but understood the ultimate return date would be determined by Ms. Deuell's doctor. On Saturday, June 17, Ms. Deuell's doctor released her to return to work without restrictions, effective June 17, and faxed the release to the employer. The employer received the release. Prior to the leave, Ms. Deuell had worked full-time hours, Monday through Friday. On Monday, June 19, Ms. Deuell contacted her immediate supervisor, Program Director Stephanie Eagan-Holtz, to discuss her return to work and to learn her schedule for the week. Ms. Eagan-Holtz indicated that the schedule for the week had already been posted and that the employer would place Ms. Deuell "on-call" for the week. Ms. Deuell was summoned to work 4.5 hours on Wednesday, June 21, but otherwise received no hours for the week. On Monday, June 26, the employer returned Ms. Deuell to her regular full-time schedule.

Ms. Deuell established a claim for benefits that was effective June 25, 2006 and claimed benefits for one week that ended July 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Deuell was available for work during the week of June 25-July 1, 2006.

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(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.

(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.

The evidence in the record indicates that Ms. Deuell did not apply for and establish her claim for benefits until the week of June 25-July 1, 2006. Ms. Deuell returned to her full-time work on Monday, June 26, and was not available for other employment during that week. Ms. Deuell was employed at her same full-time hours and wages during the benefit week that ended July 1, and therefore is not eligible for benefits for that week.

Had Ms. Deuell established her claim for benefits during the week of June 18-24, 2006, the week during which her hours were reduced, the outcome in this matter would have been different. The evidence in the record indicates that Ms. Deuell was *partially unemployed* during the week of June 18-24, 2006, and would have been eligible for benefits, provided she was otherwise eligible. An individual is deemed *partially unemployed* in any week in which, while employed at the individual regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b). Because Ms. Deuell did not have a claim for benefits in effective for that week, she would not be eligible for benefits for that week.

DECISION:

The Agency representative's July 25, 2006, reference 01, decision is affirmed. The claimant was still employed at her same hours and wages, and not available for other work, during the week of June 2-July 1, 2006 and, therefore, not eligible for benefits for that week.

jt/kjw