

**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**

**GORDON KAMBEL
PO BOX 221
GRIMES IA 50111-0221**

**IOWA MACHINE SHED CO
1501 RIVER DR
MOLINE IL 61265**

**Appeal Number: 06A-UI-07417-BT
OC: 04/30/06 R: 02
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 for Work

STATEMENT OF THE CASE:

Gordon Kambel (claimant) appealed an unemployment insurance decision dated May 26, 2006, reference 04, which held that he was not eligible for unemployment insurance benefits because he is still employed at the same hours and wages as in his original contract of hire with the Iowa Machine Shed Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 9, 2006. The claimant participated in the hearing. The employer participated through Mark Bierman, General Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant separated from his full-time employer in September 2005 and is qualified for benefits as a result of that separation. He was hired as a part-time cashier/hostess with the Iowa Machine Shed on March 23, 2006 and continues to be employed in that same capacity with no change in his hours or wages.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant meets the availability requirements based on his part-time employment with Iowa Machine Shed.

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 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time cashier/hostess with Iowa Machine Shed. There has been no separation from his part-time employment and he is currently working for this employer at the same hours and wages as contemplated in his original contract of hire. The claimant is, therefore, disqualified from receiving benefits from this part-time employer. However, the claimant is separated from his full-time employer and has qualified for benefits based on that separation.

DECISION:

The unemployment insurance decision dated May 26, 2006, reference 04, is modified in favor of the appellant. The claimant is not qualified for benefits based on his part-time employment and the employer's account is not subject to charge. The claimant qualifies for benefits based on his separation from full-time employment, provided he is otherwise eligible.

sda/cs