

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACEY A GROVER**  
Claimant

**APPEAL NO: 10A-UI-17232-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BIRD HOUSE CAFE**  
Employer

**OC: 11/07/10**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Tracey Grover (claimant) appealed a representative's December 13, 2010 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits based on her employment with Bird House Café (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 1, 2011. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Mary Schemmel, Owner.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 27, 2010, as a part-time dishwasher. She consistently worked 32 to 35 hours per week. From October through mid-November 2010, the claimant worked 28 to 31 hours per week. From mid-November to the present the claimant works 15 hours per week. The claimant's reduction in hours is due to lack of work from the employer.

**REASONING AND CONCLUSIONS OF LAW:**

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(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 worker and is still working part-time for the employer. The hours have changed from what was contemplated at the time the claimant was hired. The change in hours was initiated by the employer. The claimant is qualified to receive unemployment insurance benefits and is considered partially unemployed. The employer is not relieved of charges.

**DECISION:**

The representative's December 13, 2010 decision (reference 02) is reversed. The claimant is qualified to receive unemployment insurance benefits and is considered partially unemployed. The employer is not relieved of charges.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs