

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI L KERKOVE
Claimant

APPEAL NO: 07A-UI-10555-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMERS HEN HOUSE INC
Employer

**OC: 10/07/07 R: 03
Claimant: Respondent (2)**

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Farmers Hen House, Inc. (employer) appealed a representative's November 6, 2007 decision (reference 01) that concluded Kristi L. Kerkove (claimant) was eligible to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant was working reduced hours. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Mark Miller, the president/owner, appeared on the employer's behalf. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work as of October 7, 2007?

FINDINGS OF FACT:

The claimant started working for the employer as a full-time employee in March 2007. The claimant injured her hand at work in August 2007. As a result of the work-related injury, the employer's workers' compensation carrier is taking care of any workers' compensation benefits the claimant is entitled to receive. The claimant has been released to full-time work, but is restricted to lifting no more than ten pounds.

The employer has full-time work for the claimant to do even with her work restrictions. Any week the claimant has not worked full-time since October 7 has been as a result of issues centering on the claimant, not the employer. When the claimant has not worked full-time, this has been her decision.

The claimant established a claim for unemployment insurance benefits during the week of October 7, 2007. The claimant has not filed any weekly claims.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. The claimant worked full-time until she injured her hand at work. After her injury, the claimant's doctor released her to work with a 10-pound weight restriction. The employer has full-time work for her to do while accommodating her work restrictions, but the claimant has not worked full-time for various reasons. The claimant decides or controls when she will or will not work full-time. The evidence does not establish that the claimant is able to and available for full-time work. As of October 7, 2007, the claimant is not available to work full-time. Therefore, she is not eligible to receive unemployment insurance benefits. Since the claimant has not filed any weekly claims, if the claimant's situation changes, she must reopen her claim and establish her eligibility to receive unemployment insurance benefits.

DECISION:

The representative's November 6, 2007 decision (reference 01) is reversed. As of October 7, 2007, the claimant is not eligible to receive unemployment insurance benefits because she is not available for work. Since the claimant has not filed any weekly claims, if her situation changes and she decides to start filing weekly claims, she must reopen her claim and establish her eligibility to receive unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs