

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

GENEVIEVE R MALONE  
406 – 5<sup>TH</sup>  
CLEARFIELD IA 50840

HOME SWEET HOME CARE INC  
16 W 6<sup>TH</sup> ST  
ATLANTIC IA 50022-1449

Appeal Number: 04A-UI-09358-LT  
OC: 07-18-04 R: 03  
Claimant: Respondent (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

STATEMENT OF THE CASE:

Employer filed a timely appeal from the August 20, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 23, 2004. Claimant did participate. Employer did participate through Angie Bidding and Melanie Fredericksen.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tish Frasier called the client on July 22 and spoke to claimant on the phone and was told that due to an indefinite reduction of waiver hours changes that her hours were cut to 22 hours effective July 25 along with other employees. Frasier did not offer any other work and did not participate in the hearing. Claimant was willing to work any other hours available. She returned to her regular hours effective August 1, 2004.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work the week ending July 31, 2004.

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".

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. Schmitz v. IDHS, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code section 17A.14(1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. Schmitz, 461 N.W.2d at 608.

Frasier led claimant to reasonably believe that there was no work available that week beyond 22 hours because of the month end waiver hours reduction. Claimant was available for her regular hours of work but none was made available. Accordingly, partial benefits are allowed.

## DECISION:

The August 20, 2004, reference 1, decision is affirmed. The claimant was able to work and available for work effective July 18 2004. Benefits are allowed based upon gross wages reported.

dml\pjs