

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARLA K LUITJENS**

Claimant

**APPEAL NO. 06A-UI-11338-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**M&W ENTERPRISES INC**

Employer

**OC: 10/22/06 R: 01  
Claimant: Respondent (4-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, M&W Enterprises, Inc. (M&W), filed an appeal from a decision dated November 21, 2006, reference 01. The decision allowed benefits to the claimant, Marla Luitjens. After due notice was issued, a hearing was held by telephone conference call on December 12, 2006. The claimant participated on her own behalf. The employer participated by Owner Mike Pottebaum

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Marla Luitjens was employed by M&W from May 21, 2004 until October 23, 2006. She was a part-time cook/bartender at the restaurant. Owner Mike Pottebaum leased the premises to Glenda Mohn effective October 23, 2006, and she retained the current employees.

The new owner spoke with the claimant on October 27, 2006, and told her she would be getting a lot fewer hours since Ms. Mohn intended to be doing a lot of the work herself. Ms. Luitjens would no longer be working every lunch hour and would be scheduled only on those nights the new employer thought she would be needed. The claimant was not happy about the reduction in hours but did accept employment with Ms. Mohn on that basis, and immediately filed a claim for unemployment benefits.

**REASONING AND CONCLUSIONS OF LAW:**

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".

The claimant is no longer employed with M&W, the business having been leased to a new person with, presumably, a new employer account. M&W would therefore not be responsible for benefits paid to the claimant.

The claimant may not be able and available for work considering her current employment. Under the provisions of 871 IAC 24.23(26). She accepted the employment with Ms. Mohn with the knowledge that she would be scheduled for substantially fewer hours. This was a new contract of hire and may render her ineligible. The matter should be remanded to the Claims Section for determination under this new contract of hire.

**DECISION:**

The representative's decision of November 21, 2006, reference 01, is modified in favor of the appellant. Marla Luitjens is eligible for benefits but M&W Enterprises shall not be charged with benefits paid to the claimant.

The issue of whether the claimant is able and available for work under her new contract of hire with Glenda Mohn is remanded to the Claims Section for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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