

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINDI AUGSBURGER
Claimant

APPEAL NO. 11A-UI-05039-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER'S SERVICE BUREAU INC
Employer

**OC: 11/14/10
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated April 6, 2011, reference 02, which held claimant not able and available for work for the week ending March 5, 2011. After due notice, a telephone conference hearing was scheduled for and held on May 11, 2011. Claimant participated personally. Employer participated by Superintendent Joe Rausenberger.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds as follows. Employer's Service Bureau, Inc. provides contract labor for the Nestle Purina plant. The claimant works for Employers Service Bureau. Claimant was scheduled to work four days during the week. She called in sick two days, worked one day and was turned away one day because the employer did not have enough work.

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".

871 IAC 24.23(29) states that a worker is considered “unavailable” for work when the worker fails “to work the major portion of the scheduled workweek for the claimant’s regular employer.

In order to be considered to be able and available for work, the claimant must be available for a majority of the workweek. In this instance, the claimant called in sick for precisely one-half of the scheduled workweek. This is not the “major portion” or a majority of the workweek. The fact-finding decision is correct.

DECISION:

The decision of the representative dated April 6, 2011, reference 02, is affirmed. Claimant is not eligible to receive unemployment insurance benefits for the week ending March 5, 2011, because the claimant failed to attend work for the major portion of the week.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css