

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE M ELLINGSON
Claimant

APPEAL NO. 11A-UI-06037-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR COOPERATIVE
Employer

**OC: 03/27/11
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 28, 2011, reference 01, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on June 2, 2011. Claimant participated personally. Employer participated by Dennis Lau, location manager.

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 having considered all of the evidence in the record, finds: Claimant works for this employer at about 45 hours per week. Claimant suffered a slowdown for two weeks in early April due to lack of business. Claimant worked about two days each week instead of five. Claimant was able and available for work but for the slowdown in business.

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".

Benefits shall be allowed effective March 27, 2011. Claimant was not offered the same hours and wages for two weeks. This was due to a slowdown in business. Claimant was able and available for full-time hours. Claimant was partially unemployed and benefits should be allowed.

DECISION:

The decision of the representative dated April 28 2011, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, effective March 27, 2011, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw