

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI A JANUSZ
Claimant

APPEAL NO. 08A-UI-08451-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OVER COFFEE PRODUCTIONS LC
Employer

**OC: 07/06/08 R: 03
Claimant: Appellant (2)**

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 10, 2008, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 20, 2008. Claimant participated with Michael Temple, former business manager of Over Coffee Productions. Employer participated through Ryp Walters, owner.

ISSUE:

The issue is whether claimant is able to and available for work effective July 27, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time project manager from August 21, 2007 until August 6, 2008, when she quit. There were three paychecks, one in June and two in July, that she held back from cashing because she knew there were not enough funds in the payroll account to cash everyone's checks when issued. She used that information to tell lower paid employees when they could cash their checks even though there were not enough funds to cash her check. She e-mailed Walters asking when her paycheck would clear. Two cleared before the separation but after the payroll date, and the third cleared after the separation. She also knew employer had not been paying payroll taxes for some time and then when the company got levied for those taxes and he moved the account and paid the employees through a fictitious corporation to avoid that. She told Walters multiple times he could get into trouble for not paying payroll taxes. In late July claimant consulted with attorneys about the consequences of employer not paying payroll taxes, the fictitious corporation, bankruptcy, and her potential personal liability as upper management. She worked from July 27 through August 2, except for a half day when she went home sick.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 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".

Since claimant worked the majority of the week beginning July 27, 2008, she is considered available for work. Accordingly, benefits are allowed.

DECISION:

The September 10, 2008, reference 03, decision is reversed. The claimant is able to work and available for work effective July 27, 2008. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw