

**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**

**MARCELLA M MERSCH
1431 LAINSON AVE
FORT DODGE IA 50501**

**R&K BIRKESTRAND OSWEILERS INC
625 – 627 2ND
WEBSTER CITY IA 50595**

**Appeal Number: 06A-UI-01407-HT
OC: 12/18/05 R: 01
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:

The employer, R&K, filed an appeal from a decision dated January 31, 2006, reference 02. The decision allowed benefits to the claimant, Marcella Mersch. After due notice was issued a hearing was held by telephone conference call on February 22, 2006. The claimant participated on her own behalf. The employer participated by Owner Ron Birkestrand.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marcella Mersch began employment with R&K on June 3, 2004. She was hired as a part-time employee and worked five hours per day on

Thursdays and Fridays, and five hours on one Saturday every month. Her schedule changed in June 2005 when she still worked the same number of hours but her days of work were Monday and Tuesday, with one Saturday per month.

In October 2005 the employer hired a full-time person and from that point on the claimant's hours were reduced to four every week, with the days varying from week to week depending on the schedule. She worked slightly more hours per week the first two weeks in January when the manager, then the assistant manager were gone.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is eligible for benefits. The judge concludes she is.

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".

Although it appears the claimant was never officially guaranteed any minimum number of hours per week, she worked the same number of hours for over 16 months with only a slight variation in the days of the week. The administrative law judge considers this to be a de facto contract and when her hours were reduced by more than half after the hiring of a full-time person, she may be considered to be working on a reduced work-week basis. She is still able and available to work the ten hours per week plus one Saturday per month as she had since her time of hire. She is therefore able and available for her regular work hours.

DECISION:

The representative's decision of January 31, 2006, reference 02, is affirmed. Marcella Mersch is able and available for work and eligible to receive unemployment benefits.

bgh/s