

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

TANIA L LUNA
APT 2
920 CENTRAL AVE
ESTHERVILLE IA 51334-2249

ESTHERVILLE FOODS INC
105 N 4TH
PO BOX 158
ESTHERVILLE IA 51334-0158

Appeal Number: 06A-UI-03824-HT
OC: 03/12/06 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, Estherville Foods, filed an appeal from a decision dated March 30, 2006, reference 03. The decision allowed benefits to the claimant, Tania Luna. After due notice was issued, a hearing was held by telephone conference call on April 25, 2006. The claimant participated on her own behalf and Susanna Jaquez acted as interpreter. The employer participated by Assistant Manager Mike Amdahl.

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: Tania Luna began working for Estherville Foods on July 11, 2005. She is still employed as a full-time candler.

The employer had a slow down in early March 2006 and the claimant filed for benefits with an effective date of March 12, 2006. She filed a claim for three weeks but only received benefits for the first week because her wages for the weeks ending March 25 and April 1, 2006, were in excess of her weekly benefit amount.

The employer questioned her availability for work because she was two hours tardy on March 16, 2006, but otherwise worked all available hours. She worked 23.75 hours and could have worked 25.75 hours.

REASONING AND CONCLUSIONS OF LAW:

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

871 IAC 24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant may have been two hours tardy for work on March 16, 2006, but she still worked all other hours the employer had available to her. The above Administrative Code section indicates an individual is not available for work only if she does not work the majority of the hours available. This is not correct in the present case as Ms. Luna did work the majority of her scheduled hours. She is therefore still considered able and available for work.

DECISION:

The representative's decision of March 30, 2006, reference 03, is affirmed. Tania Luna is able and available for work and eligible to receive unemployment benefits.

bgh/kkf