

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**INA STUELAND**  
Claimant

**APPEAL NO: 10A-UI-08505-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEBSTER CITY CUSTOM MEATS INC**  
Employer

**OC: 05-02-10**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work  
Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 10, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 2, 2010. The claimant participated in the hearing. Connie Ingraham, Vice-President of Administration and Finance and David Bergeson, Product Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began her employment with Webster City Custom Meats as a full-time bacon department packaging laborer August 11, 1980. The employer was forced to eliminate some positions in the spring of 2010 but the claimant was not affected. If her department completed all of its work she was to ask Product Manager David Bergeson for additional work so she could accumulate additional hours by switching departments, which she did routinely in the past. The employer posted a sign on the bulletin board after the Thanksgiving and Christmas holiday rush notifying employees to ask for work if their department ran out, although the claimant testified she did not see the note. Additionally, the employer provided other types of work for employees on Tuesdays when it sometimes did not have regular work available during its slow periods. The claimant worked 30.16 hours the week ending May 9, 2010; 27.24 hours the week ending May 16, 2010; 38.29 hours the week ending May 23, 2010; 42.24 hours the week ending May 30, 2010; 39.04 hours the week ending June 6, 2010; 36.36 hours the week ending June 13, 2010; 40.09 hours the week ending June 20, 2010; 38.34 hours the week ending June 27, 2010; 40.17 hours the week ending July 4, 2010; and 44.46 hours the week ending July 11, 2010. She had the opportunity to work more hours if under 40 hours for the week if she asked Mr. Bergeson for additional hours.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able and available for work.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant was working to such an extent that she effectively removed herself from the labor market during each of the weeks of her claim for benefits. Additionally, she could have had more hours had she simply requested them from Mr. Bergeson. Under these circumstances, the administrative law judge must conclude the claimant is not able and available for work as that term is defined by Iowa law and therefore benefits must be denied.

## **DECISION:**

The June 10, 2010, reference 01, decision is affirmed. The claimant is not eligible for unemployment insurance benefits because she was not available for work in the labor market to the extent required to be considered available for work.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs

