

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

VALERIE J GERKS
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KIDDIE KARRASEL ACADEMY INC
328 N CODY RD
LE CLAIRE IA 52753

Appeal Number: 04A-UI-09842-DT
OC: 07/25/04 R: 04
Claimant: Appellant (4)

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:

Valerie J. Gerks (claimant) appealed a representative's August 31, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Kiddie Karrasel Academy, Inc. (employer) because of an issue of being able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 6, 2004. This appeal was consolidated for hearing with two related appeals, 04A-UI-9843-DT and 04A-UI-09844-DT. The claimant participated in the hearing. Angela Mapes appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on October 13, 2004. She worked part-time (approximately 30-35 hours per week) as a co-teacher/teacher's aide in the employer's childcare and preschool center. Her last day of work was August 3, 2004. Her employment ended as of August 13 due to a previously submitted notice of resignation.

She typically was scheduled to work from approximately 7:30 a.m. to 3:00 p.m., usually five days per week. On July 18 she contacted the director/president, Ms. Mapes, and informed her that she would not be able to work that week except for Thursday, July 22, because of assisting in watching her nephew in another town, whose sitter was not available. The claimant did work on July 22.

Ms. Mapes understood that the claimant would contact her on July 23 to confirm her availability for the week of July 26. The claimant believed that Ms. Mapes understood that she was only unavailable for the week of July 19. When Ms. Mapes did not hear further from the claimant on July 23, she instructed the assistant director to put the claimant on an "on call" status. The claimant did work on July 26 and July 27, although apparently in place of another employee. She did not work on July 28 and July 29. She had previously requested to be off work on July 30.

On July 30 the claimant called Ms. Mapes and asked about her hours for the week of August 2. Ms. Mapes indicated that she was not doing the scheduling for that week, that it was the assistant director. The claimant worked for another employee on August 3, and spoke to the assistant director. The assistant director told the claimant that Ms. Mapes had told her to put the claimant on on-call status, and not changed that instruction. The claimant told the assistant director that she needed at least three or four days per week. However, the employer never changed the claimant's status, and she was not called to work for anyone else prior to her August 13 separation.

The claimant was quitting because she planned to begin working in another position. The position was to begin on August 30, 2004. However, the claimant wanted to end her employment with the employer as of August 13 so she could be with her daughter during the first two weeks of school the weeks ending August 21 and August 28.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for unemployment insurance benefits by being able and available for employment.

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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant has the burden to establish that she was able and available for work. Iowa Code Section 96. 96.6-2; 871 IAC 24.22(2). She had informed the employer that she would not be available for work as usual for the week of July 19. She did not establish that she had adequately informed the employer that she would return to being available for work as usual for the week of July 26. However, as of July 30, the claimant sufficiently informed Ms. Mapes that she was available and seeking to return to her prior schedule. She was able and available to work as usual for the week of August 2. The fact that Ms. Mapes did not communicate that change in the claimant's status to the assistant director who was doing the scheduling is not attributable to the claimant. She was able and available for her regular work for the weeks ending August 7 and August 14, 2004, and is eligible for unemployment insurance benefits for those weeks if she is otherwise eligible.

For the weeks ending August 21 and August 28, 2004, the claimant had removed herself from the labor market because she wanted to spend time with her daughter who was starting school. She was not able and available for work those weeks, and is not eligible for benefits for those weeks. 871 IAC 24.22(2); 871 IAC 24.23(16).

DECISION:

The representative's August 31, 2004 decision (reference 02) is modified in favor of the claimant. The claimant was not able to work and available for work for the weeks ending July 31, August 21, and August 28, 2004. However, for the weeks ending August 7 and August 14, 2004, the claimant was able and available for work, and is qualified to receive unemployment insurance benefits for those weeks, if she is otherwise eligible.

ld/kjf