

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KASMIRA L PAYTON SAMS
Claimant

APPEAL NO. 07A-UI-11207-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAVES, ORVILLE
MCDONALDS OF KNOXVILLE
Employer

OC: 10/28/07 R: 03
Claimant: Respondent (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated December 3, 2007, reference 03, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on December 18, 2007. Claimant participated personally. Employer participated by Lesley Covey, Restaurant Manager.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked about 25 to 32 hours per week as a part-time crew worker. Claimant's hours were cut to 12 hours and less after October 28, 2007. Claimant did not always work all the hours. However, the subsequent schedule varied from zero to 12 hours at best.

REASONING AND CONCLUSIONS OF LAW:

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".

Benefits shall be allowed effective October 28, 2007. Claimant had previously been working about 25 to 32 hours per week. The hours were reduced from zero to twelve effective October 28, 2007. Claimant was not offered the same hours as in her prior months. This is a reduction that amounts to partial unemployment. Claimant did not miss sufficient hours to remove her from the labor market after October 28, 2007.

The separation of employment is not at issue in this matter as it happened after October 28, 2007. Employer may report the separation to Workforce Development if it wants a hearing on the discharge issue, should one not already be in process.

DECISION:

The decision of the representative dated December 3, 2007, reference 03, is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective October 28, 2007, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css