

**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**

**BRUCE H ADAMS
408 1ST ST SW #4
CEDAR RAPIDS IA 52404**

**SHRIJI INC
4011 16TH AVE SW
CEDAR RAPIDS IA 52404**

**Appeal Number: 04A-UI-00872-MT
OC: 12/07/03 R: 03
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:

Employer filed an appeal from a decision of a representative dated January 20, 2004, reference 01, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on February 16, 2004. Claimant participated personally. Employer participated by Eshok Parikh, Owner, and Rani Parikh, President General Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works for the employer as a clerk, part-time. Claimant, over the last three years, worked on average 40 hours per week even though the job did not guarantee any number of hours. The hours were flexible depending on how many employees were working at the time.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant is 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".

Claimant had been receiving 40 hours per week over a period of years even though he was not guaranteed full time work. When the hours were reduced this triggered entitlement to benefits as it was the employer that reduced claimant's hours. This is a slow down attributable to employer. It is not the contract of hire that determines whether claimant is eligible for benefits, it is the hours worked over the prior months and years. Since employer involuntarily and unilaterally reduced claimant's hours of work he is able and available for work and eligible for benefits. Benefits shall be allowed effective December 7, 2003.

DECISION:

The decision of the representative dated January 20, 2004, reference 01 is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective December 7, 2003, provided claimant meets all other eligibility requirements.

mdm\kjf