

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DESHAWN Y BRINER**  
Claimant

**APPEAL NO. 06O-UI-10752-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**J & M PARTNERSHIP  
MCDONALDS**  
Employer

**OC: 08/20/06 R: 03  
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, J & M Partnership (J & M), filed an appeal from a decision dated September 14, 2006, reference 02. The decision allowed benefits to the claimant, DeShawn Briner. After due notice was issued, a hearing was held by telephone conference call on November 21, 2006. The claimant participated on her own behalf. The employer participated by Area Supervisor Terri Torres.

**ISSUE:**

The issue is whether the claimant is able and available.

**FINDINGS OF FACT:**

DeShawn Briner was employed by J & M from July 28 until September 4, 2006. She had been employed by another McDonalds which was temporarily closed for construction and other restaurants in the area took on some of the displaced workers until their store could be reopened.

At the time Ms. Briner was hired by J & M, she was asked what hours she would be available to work and she indicated 5:00 a.m. until 3:00 p.m. She was scheduled as needed during those hours but did not make herself available for night or weekend shifts which limited the amount of hours the employer could give her.

The claimant filed for unemployment benefits with an effective date of August 20, 2006. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

**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".

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was working on a part-time basis as per the contract of hire. She had limited the number of hours she was available to work and that restricted the amount of time the employer had to put her on the schedule. Under the provisions of the above Administrative Code section, she is not able and available for work.

**DECISION:**

The representative's decision of September 14, 2006, reference 02, is reversed. DeShawn Brine is not eligible for benefits as she is not able and available for work.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/cs