

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINA L WARTH**  
Claimant

**APPEAL NO. 08A-UI-08824-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREAT WALL RESTAURANT INC**  
Employer

**OC: 08/10/08 R: 04**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Kristina Warth (claimant) appealed a representative's September 29, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she refused suitable work with Great Wall Restaurant (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 17, 2008. The claimant participated personally. The employer participated by Charlie Su, Manager.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in July 2006, as a part-time server. She consistently worked 25 hours per week. In March 2008, the claimant notified the employer she was pregnant and planned to work as long as she could. In August 2008, the employer felt the claimant looked tired and wanted her to work as a hostess with fewer hours. On August 13, 2008, the claimant agreed to work as a hostess but not reduce her hours. On August 14, 2008, the employer reduced the claimant's hours to six per week working as a hostess. The claimant worked approximately six hours per week from the week ending August 16 to the week ending October 10, 2008. The claimant gave birth on October 11, 2008, and is still on maternity leave. She plans to return to work with the employer on or about November 11, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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 hired as a part-time worker and is not still working part-time for the employer as contemplated at the time of hire. The employer changed her part-time hours because of the claimant's pregnancy. The change in hours was initiated by the employer. The claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:**

The representative's September 29, 2008 decision (reference 01) is reversed. The claimant is not disqualified to receive unemployment insurance benefits, so long as she is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw