

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMMY A WENZEL**  
Claimant

**APPEAL NO. 10A-UI-04433-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MGV INC**  
Employer

**OC: 01/03/10**  
**Claimant: Appellant (4)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Tammy Wenzel, filed an appeal from a decision dated March 12, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 5, 2010. The claimant participated on her own behalf. The employer, MGV, Inc., participated by General Manager Mark Dietz.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Tammy Wenzel was employed by MGV beginning November 2007. She is a part-time seasonal employee. She filed a claim with an effective date of January 3, 2010, because she had been laid off for one week by her regular employer, Ameriserve. She requested not to be on the schedule at MGV that week because she knew she would be on call at Ameriserve. MGV agreed to her request. She worked the remainder of the season as required.

**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".

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant was off the schedule at MGV for only one week by agreement of the parties. She was able and available to her part-time employer the remainder of the season, as she had in the past years. She remains as a seasonal employee as she has been for the past three seasons. She is therefore able and available for work but the employer's account will not be charged as she is employed in the same capacity as during her base period.

**DECISION:**

The representative's decision of March 12, 2010, reference 01, is modified in favor of the appellant. Tammy Wenzel is able and available for work and eligible for unemployment benefits. The account of MGV shall not be charged.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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