

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUNG TRAN**

Claimant

**APPEAL NO. 08A-UI-09860-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RACCOON VALLEY PARTNERSHIP**

Employer

**OC: 08/24/08 R: 02  
Claimant: Respondent (4)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

Raccoon Valley Partnership filed an appeal from a representative's decision dated October 20, 2008, reference 01, which held that Dung Tran satisfied the availability requirements of the law effective August 24, 2008. After due notice was issued, a hearing was held by telephone on November 12, 2008. Ms. Tran participated personally. The employer participated by Patty Rogers, Office Manager. Phuong Nguyen participated as the interpreter.

**ISSUE:**

At issue in this matter is whether Ms. Tran has been available for work since filing her claim effective August 24, 2008.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Tran began working for Raccoon Valley Partnership, doing business as a McDonald's restaurant, on August 15, 1997. She was working full time as a crew member at the employer's Valley West Mall location when that location closed on August 13, 2008. She was offered work at the Grand Avenue location but indicated she did not have transportation to that site.

Ms. Tran wanted to work at the employer's location on Forest Lane in Clive. She was told to contact the manager at that location. The manager was not available when Ms. Tran went to the Forest Lane restaurant. She spoke to the assistant manager and left her telephone number to be contacted. When she did not receive a return call, she filed a claim for job insurance benefits during the week of August 24, 2008. Ms. Tran returned to full-time work with the employer on October 27, 2008. She last claimed job insurance benefits for the week ending October 11, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

In order to receive job insurance benefits, an individual must be able to and available for work. Iowa Code section 96.4(3). It was the employer's contention, in essence, that Ms. Tran was

voluntarily unemployed because she declined available work. After the closing of the location where she worked, Ms. Tran indicated she wanted to work at the location on Forest Lane because she did not have transportation to other locations. She went to that location but was unable to speak with the manager.

Ms. Tran worked for McDonald's for over ten years. Given this history, the administrative law judge is not inclined to believe she would decline an opportunity to continue her employment. The fact that she went to the Forest Lane location to speak with management is indicative of a desire to continue working for McDonald's. Ms. Tran utilized a translator during the hearing. Based on this factor, there may well have been a language barrier that prevented her from fully understanding what steps she was to take to continue working at a different location. The administrative law judge believes she made a good-faith effort to continue her employment. In short, it is concluded that Ms. Tran was not voluntarily unemployed when she filed her claim for job insurance benefits. She was expecting a call as to when she was to start at the new location and filed for benefits only after she did not receive a call.

For the reasons stated herein, the administrative law judge concludes that Ms. Tran was available for work within the meaning of the law as of August 24, 2008. She resumed full-time work on October 27. Therefore, she was no longer available for other work as of that date. As such, benefits are denied as of the Sunday of the week in which she returned to work, October 26.

**DECISION:**

The representative's decision dated October 20, 2008, reference 01, is hereby modified. Ms. Tran is allowed benefits, provided she is otherwise eligible, effective August 24, 2008. Benefits are denied effective October 26, 2008 and until such time as she is again available for other work.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs