

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESHAWN Y BRINER
Claimant

APPEAL NO. 06A-UI-09271-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J & M PARTNERSHIP
Employer

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

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 14, 2006, reference 02, that concluded the claimant was working part-time and was available for work. A telephone hearing was held on October 3, 2006. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Terri Torres participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant eligible for partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 20, 2006. She had been working for the employer, but in August 2006, the restaurant in which she was working closed temporarily for remodeling. She was transferred to another restaurant owned by the employer, and filed for benefits because she thought her hours might be reduced. The claimant filed no weekly claims for benefits. The employer provided the claimant with as many hours as they had available. The claimant went back to work for her original restaurant after about a month. When the claimant was hired, she was informed that her employment was part-time and there were no guarantees as to the number of hours or days she would be scheduled to work each week.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The law provides that a claimant cannot be considered partially unemployed if the claimant is working the same hours and for the same wages as under the original contract of hire. 871 IAC 24.23 (26). Under this rule, the claimant is not eligible to receive unemployment benefits because there has been no proof that she was working a reduced workweek differed from the contract of hire.

DECISION:

The unemployment insurance decision dated September 14, 2006, reference 02, is reversed. The claimant is ineligible to receive unemployment insurance benefits. If the claimant believes that circumstances have changed, she must reapply for benefits and establish her eligibility for benefits.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw