

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RHONDA M VON THUN**  
Claimant

**APPEAL NO. 10A-UI-06780-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANDREW M KUSEK JR MACHINE &  
PATTERN WORKS INC/  
SCHULT ENGINEERING**  
Employer

**OC: 04/04/10**  
**Claimant: Respondent (1)**

Section 96.4-3 – Able & Available for Work

**STATEMENT OF THE CASE:**

Schult Engineering filed a timely appeal from a representative's decision dated April 29, 2010, reference 01, which found the claimant able and available for work and eligible to receive unemployment insurance benefits beginning April 4, 2010. After due notice, a telephone conference hearing was held on June 24, 2010. The claimant participated personally. The employer participated by Andrew Kusek, Company President/Owner and Polly Cotton, Secretary.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: The claimant's employment with the captioned company began on December 12, 2008 when the company underwent new ownership. Ms. Von Thun was employed at that time as a part-time cleaning worker working 18 hours per week. In January 2010 the employer reduced the claimant's working hours to 10 hours per week as a cost saving measure. The claimant opened a claim for unemployment insurance benefits with an effective date of October 4, 2009 for partial unemployment.

Ms. Von Thun in addition to her employment with Schult Engineering also performed some work in self employment to supplement her income. Ms. Von Thun has been able and available to resume her previous number of working hours with Schult Engineering. The claimant has placed no restrictions or limitations on her ability to resume the level of employment that was previously available to her with Schult Engineering. The claimant reports only from self employment each week that she claims benefits as the claimant is partially unemployed at her regular job. It appears that the work search requirements are waived.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant is able and available to return to work at the same level of employment that she maintained prior to her hours being reduced by Schult Engineering. It does.

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 evidence in the record shows Ms. Von Thun is partially unemployed due to a reduction in her working hours. The claimant is able and available to accept additional working hours from this employer. The claimant's outside self employment does not unduly limit her availability for work with this employer. Income from self employment is not considered wages and is not deducted from unemployment insurance benefits. The evidence in the record establishes that although the claimant engages in self employment, she is nonetheless able and available for work whenever work is available for this employment. Claimant is available for her regular hours of work and is still employed part-time at the time of hearing. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated April 29, 2010, reference 01, is affirmed. The claimant is able and available for work. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs