

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENAYA S CLAYBORNE**  
Claimant

**APPEAL NO. 09A-UI-05119-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOLDEN ARCHES IA  
RACCOON VLY PTSP-MCDONALDS REST**  
Employer

**Original Claim: 02-15-09  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(3) – Restrictions on Employability

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 16, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 28, 2009. The claimant did participate. The employer did participate through Jeff Fournier, Restaurant Manager. Employer's Exhibit One was received.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a crew person, part-time, beginning April 9, 2008, through date of hearing, as she remains employed.

When the claimant was hired, she provided her availability on her job application. In January 2009 and February 2009, the claimant changed her availability to greatly reduce the hours and days she was available to work. In Employer's Exhibit One it is clear that the claimant was so limiting the hours and days she could work that her hours were reduced at her own request. The claimant's restrictions on her availability are the only reason why her hours were reduced. The claimant will not work past 2:30 p.m. in the afternoon.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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(3) provides:

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

The claimant's hours were reduced only because she refused to work when work hours were available for her. The claimant has placed so many restrictions on her availability for work that she cannot be considered available for work. Accordingly, benefits are denied.

**DECISION:**

The March 16, 2009, reference 01, decision is affirmed. The claimant is not able to work and available for work effective February 15, 2009. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw