

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TINA J STEWART  
BOX 59H RR#3  
KAHOKA MO 63445

DBA HOLTkamp FAMILY DINER  
484 NORTH JOHNSON  
KAHOKA MO 63445

Appeal Number: 04A-UI-01671-BT  
OC: 12/21/03 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Tina Stewart (claimant) appealed an unemployment insurance decision dated February 12, 2004, reference 02, which held that she was not eligible for unemployment insurance benefits because she was not available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2004. The claimant participated in the hearing. The employer participated through owner Vincent Holtkamp.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant began employment as a cook with the employer on a part-time basis but has transferred to full-time. There has been no separation from employment. She continues to be employed in that same capacity with no change in her hours or wages.

#### REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant qualifies for unemployment insurance benefits based on her availability 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(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant was hired as a part-time cook and she continues to be employed as a cook but is now working full-time hours. There has been no separation from employment. The claimant is not eligible for unemployment insurance benefits since she is working full-time. Benefits are denied.

#### DECISION:

The unemployment insurance decision dated February 12, 2004, reference 02, is affirmed. The claimant is unavailable for work and therefore does not qualify for unemployment insurance benefits.

sdb/kjf