

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

KIMBERLY A FELLOWS  
1012 MORGAN ST  
KEOKUK IA 52632

APAC CUSTOMER SERVICES INC  
c/o TALX UCM SERVICES  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-00767-DT  
OC: 11/28/04 R: 04  
Claimant: Appellant (2)

**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

STATEMENT OF THE CASE:

Kimberly A. Fellows (claimant) appealed a representative's January 13, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits for the week ending December 4, 2004. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2005. This appeal was consolidated for hearing with two related appeals, 05A-UI-00768-DT and 05A-UI-00769-DT. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits for the week ending December 4, 2004 by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on February 23, 1995. Her normal work schedule is to work 8:00 a.m. to 2:00 p.m., Monday through Friday. On Monday, November 29, the claimant was absent due to illness; the six hours' absence was covered under an intermittent FMLA (Family Medical Leave). She worked 8.71 hours on Tuesday, November 30, 2004. On Wednesday, December 1, she was contacted by the employer and told not to report to work due to a lack of work, but she was able and available for work had work been available. On Thursday, December 2, she worked 2.88 hours before the employer sent her home for lack of work. The employer told her not to report back for work until Monday, December 6, because of the shortage of work; the time off is referred to by the employer as "FTO" – forced time off. Therefore, the claimant did not report for any work on Friday, December 3, even though she was able and available for work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual

offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

“Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.” 871 IAC 24.22(2)(h). The claimant was able and available for the major portion of her workweek that ended on December 3, 2004, the benefit week that ended December 4, 2004. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative’s January 13, 2005 decision (reference 01) is reversed. The claimant was able to work and available for work the week ending December 4, 2004. The claimant is qualified to receive unemployment insurance benefits for that week, if she is otherwise eligible.

ld/s