

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANIS C ENGEL
Claimant

APPEAL NO. 11A-UI-11226-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WILLOWBROOK FOOD INC
MCDONALD'S RESTAURANT**
Employer

**OC: 07/10/11
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated August 19, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits beginning July 10, 2011 finding that the claimant was employed part-time and working hours available. After due notice, a telephone hearing was held on September 19, 2011. Claimant participated. The employer participated by Ms. Vickie Piper, General Manager.

ISSUE:

The issue is whether the claimant is employed part time working the hours available.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Janis Engel began her employment with the captioned employer d/b/a McDonald's Restaurant in October of 1995. Ms. Engel normally works part time working 35 to 40 hours per week as a crew person. On June 27, 2011, the claimant and other workers were transferred to a second location as the claimant's primary place of employment was undergoing remodeling.

During the weeks between June 27, 2011 and September 19, 2011, Ms. Engel was offered fewer working hours than the 35 to 40 hours she had regularly worked as a part-time employee at the employer's primary work location. On some weeks, Ms. Engel was unable to work all the hours offered due to illness or the illness of her spouse. Ms. Engel opened a claim for partial unemployment insurance benefits with an effective date of July 10, 2011. During all weeks after the claimant had opened a claim for unemployment insurance benefits through September 19, 2011, the claimant had been available for work during the majority of the workweek. On one week, the week beginning July 4, 2011, the claimant was not available the majority of the workweek because of her husband's hospitalization. This week, however, was prior to the claimant filing a claim for unemployment insurance benefits and, therefore, cannot be used to determine the claimant's eligibility for benefits after filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 claimant was hired as a part-time worker working 35 to 40 hours per week at the employer's primary work location. On June 27, 2011, the claimant's normal working hours were reduced by the employer because the claimant and other workers had been transferred to a secondary location while the primary location was being remodeled. Fewer hours were available to the claimant during the period of June 27, 2011 through September 19, 2011. Claimant, therefore, was not working the number of hours each week as established in her base period and as agreed upon at the time of hire with this employer. Because the claimant was available for work the majority of each week claimed after initiating her claim for unemployment insurance benefits, the administrative law judge must conclude that the claimant has met the able and availability requirements of the Employment Security Law. Benefits are allowed, providing the claimant has met all other eligibility requirements.

DECISION:

The representative's decision dated August 19, 2011, reference 01, is affirmed. Claimant is able and available for work. Unemployment insurance benefits are allowed beginning July 10, 2011, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs