

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSI M GARNER
Claimant

APPEAL NO. 12A-UI-07913-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOPW INC
Employer

OC: 06/03/12
Claimant: Respondent (2-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, TOPW, filed an appeal from a decision dated June 29, 2012, reference 02. The decision allowed benefits to the claimant, Lindsi Garner. After due notice was issued, a hearing was held by telephone conference call on July 25, 2012. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by General Manager Bob Lenz.

ISSUE:

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

FINDINGS OF FACT:

Lindsi Garner began employment with TOPW in November 2011. She was hired as a part-time server/bartender with no guarantee of a minimum number of hours per week. All employee schedules vary depending on the amount of business and customer needs. Ms. Garner may pick up as many hours as she wants from other employees who are not able to work.

She filed a claim for unemployment benefits with an effective date of June 3, 2012, indicating she was still working.

REASONING AND CONCLUSIONS OF LAW:

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.

Ms. Garner is still employed in her part-time job with TOPW. Her part-time status did not guarantee her any minimum number of hours per week and she is still employer in that capacity. Under the provisions of the above Administrative Code section, she is not able and available and is not eligible for unemployment benefits.

DECISION:

The representative's decision of June 29, 2012, reference 02, is reversed. Lindsy Garner is ineligible for unemployment benefits. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw