

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMBER HOSELTON**  
Claimant

**APPEAL NO: 11A-UI-05497-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**2<sup>ND</sup> GENERATION INC**  
Employer

**OC: 11-21-10**  
**Claimant: Respondent (1R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 21, 2011, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 18, 2011. The claimant participated in the hearing. Randy Gottschalk, President and Christy Van Dyke, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from her employment with 2nd Generation (Kentucky Fried Chicken) February 15, 2011. Her availability for work was questioned in November 2010 and benefits were denied because she was still working. She was subsequently separated from her employment with this employer February 15, 2011, and became able and available for work at that time.

The issues regarding the claimant's separation from this employer have not yet been determined by the Claims Section.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective April 17, 2011.

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".

The claimant is no longer working and has no medical or personal issues that would prevent her from working at this time. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The April 21, 2011, reference 03, decision is affirmed. The claimant is able to work and available for work effective April 17, 2011. Benefits are allowed provided the claimant is otherwise eligible. The issue of the claimant's separation from this employer is remanded to the Claims Section of Iowa Workforce Development for an initial determination and adjudication

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css