

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**BRITTANY A DREKE**  
Claimant

**CHEMORSE LTD**  
Employer

**APPEAL 14A-UI-09593-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/27/14**  
**Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions  
Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 11, 2014 (reference 01) unemployment insurance decision that allowed benefits based upon being partially unemployed. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2014. Claimant participated. Employer participated through manager Andrea Surels. The parties waived separation notice and fact-finding interview regarding Iowa Code § 96.5(1) and Iowa Code § 96.5(2)a.

**ISSUES:**

Is the claimant able to and available for work from July 27, 2014, through August 29, 2014?

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time (varied depending on work load, 25 to 35) as an assistant to Surels earning \$11.00 per hour. Seasonal work for the business slows during the cold months. She had some days off because of lack of child care but there were no records about when that occurred. She worked two days the week ending August 2, 2014 and reported \$110.00 in gross wages. The week ending August 9, 2014 she did not have work because Surels was on vacation. She reported 20 hours' work the week ending August 16, 2014 and 27 hours of work the week ending August 23, 2014. Claimant had wages from this employer of \$5964.00 in the third quarter of 2013; \$5168.00 in the fourth quarter of 2013; \$4270.00 in the first quarter of 2014; and \$3907.00 in the second quarter of 2014. Claimant reported gross wages of \$110.00 and received \$228.00 in benefits for the week ending August 2, 2014; \$0.00 and received \$271.00 in benefits for the week ending August 9, 2014; \$229.00 and received \$109.00 in benefits for the week ending August 16, 2014; \$297.00 and received \$0.00 in benefits for the week ending August 23, 2014; and \$239.00 and received \$99.00 in benefits for the week ending August 30, 2014.

She was separated from employment on August 29, 2014 when she quit for another job driving a truck as a subcontractor for Ken Drummond in Duncombe, Iowa effective September 2. She worked for him until Friday, September 12, 2014 when he sold his truck. She then found employment with Kum & Go effective Monday, September 15, 2014.

### **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.

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".

Iowa Admin. Code r. 871-24.22(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.

Since claimant gradually received fewer hours throughout the base period, the reduction in hours is credible. Partial benefits are allowed.

The next issue concerns the separation from employment. The administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code § 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.25(19) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(19) The claimant left to enter self-employment.

Although the employment does not have to be "covered" or insured employment, it may not be self-employment, which falls under the definition of an independent contractor. Accordingly, entering into self-employment as an independent contractor is not a good cause reason attributable to the employer for leaving the employment and benefits are denied.

**DECISION:**

The September 11, 2014 (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work from July 27, 2014 through August 29, 2014. Effective August 30, 2014 claimant is disqualified and benefits are denied for having quit to enter self-employment as an independent contractor.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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