

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A DAINO
Claimant

APPEAL NO. 08A-UI-05343-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHULTEIS, GARY D
ADAIR COUNTY VETERINARY CLINIC
Employer

OC: 04/20/08 R: 01
Claimant: Respondent (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 30, 2008, reference 01, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on June 18, 2008. Claimant participated personally with witnesses Justen Shannon and Marty Daino. Employer participated by Gary Schulteis, DVM, Owner. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was off work on February 4, 2008 for a doctor's appointment. Claimant had a cast removed. Claimant offered to return to work but had to take it easy for a while. A disagreement occurred over work duties. Claimant was upset with a coworker. The employer suggested that claimant start looking for another job. Claimant asked for conflict resolution so as to save her job. The employer either did not hear her request or refused such. Claimant was granted a two-week severance package and did not return to work. Claimant is able and available for full time work without restriction. Claimant is self-employed at about five hours per week.

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".

Inasmuch as the treating doctor has released the claimant to return to work, the claimant has established the ability to work. Claimant did return to offer her services to the employer. A conflict erupted resulting in the employer suggesting that claimant look for other work. Claimant deemed such as a discharge and accepted two-weeks severance. The failure to return to work is attributed to employer based on the statement that claimant should look for another job. Claimant did ask for work upon having her cast removed. Claimant has established the desire to return to work and as such has not voluntarily removed herself from the job market. The self-employment is only at five hours per week and is not sufficient to remove claimant from the job market. Benefits shall be allowed effective April 20, 2008.

DECISION:

The decision of the representative dated May 30 2008, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective April 20, 2008, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css