

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREA J FRANZEN**  
Claimant

**APPEAL NO. 10A-UI-07147-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILD ROSE CLINTON LLC**  
Employer

**OC: 04/04/10**  
**Claimant: Appellant (1-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Andrea Franzen, filed an appeal from a decision dated May 10, 2010, reference 02. The decision found her ineligible to receive unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 7, 2010. The claimant participated on her own behalf. The employer, Wild Rose, provided a telephone number to the Appeals Section. That number was dialed at 8:00 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the employer's participation unless a witness contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 8:08 a.m. the employer had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

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

**FINDINGS OF FACT:**

Andrea Franzen began employment with Wild Rose in July 2009. She was hired as a part-time cashier. At the time of hire she was not guaranteed any minimum number of hours per week or per pay period. She was aware the number of hours she would be scheduled depended on the customer census.

Ms. Franzen initially indicated her availability to be Friday nights after 6:00 p.m., and all day Saturday and Sunday. That changed in December 2009 when she was no longer available on Sunday. She filed for unemployment benefits when her hours were reduced due to low customer census.

Subsequent to filing her claim for benefits Ms. Franzen quit her employment with Wild Rose.

**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.

Andrea Franzen was hired on a part-time basis with no guarantee of a minimum number of hours per week or per pay period. The number of days she was available to be scheduled was down to only Friday evenings and Saturdays when she filed her claim for benefits. With this limited availability the employer did not have as many hours for which to schedule her. This was her own decision to limit her availability. She is therefore employed at the same hours and wages as agreed upon by the parties. Under the provisions of the above Administrative Code section, she is ineligible for benefits.

The issue of her separation from employment has not been adjudicated and should be remanded.

**DECISION:**

The representative's decision of May 10, 2010, reference 02, is affirmed. Andrea Franzen is ineligible to receive unemployment benefits as she is not able and available for work.

The issue of whether the claimant is disqualified for benefits as a result of her separation is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs