

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHIE A SCHURCH
Claimant

APPEAL NO. 07A-UI-00674-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMBERLY DISTRIBUTING INC
Employer

OC: 05/07/06 R: 04
Claimant: Respondent (1-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Kimberly Distributing filed an appeal from a representative's decision dated January 12, 2007, reference 03, which held that Kathie Schurch satisfied the availability requirements of the law as of December 17, 2006. After due notice was issued, a hearing was held by telephone on February 5, 2007. Ms. Schurch participated personally. The employer participated by Deb Jones, Warehouse Worker; Jason Ewen, Director of Transportation; and Richard Giudici, Owner.

ISSUE:

At issue in this matter is whether Ms. Schurch was able to and available for work as of December 17, 2006.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Schurch began working for Kimberly Distributing in September of 2006. She worked from 28 to 32 hours each week picking orders and making deliveries. She filed an additional claim for job insurance benefits effective December 17, 2006 because she had not worked for approximately three weeks. She was offered work for December 14 and 15 but declined it because she was working for a temporary placement firm. Ms. Schurch returned to work on or about December 26 and worked until January 12, 2007 when she quit.

Ms. Schurch did not claim weekly benefits after filing her additional claim. She last claimed job insurance benefits the week ending November 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Schurch satisfied the availability requirements of Iowa Code section 96.4(3) as of December 17, 2006. For the most part, she remained available to work for Kimberly Distributing to the same extent as she had previously. The employer simply was not giving her the hours. The fact that she declined work on December 14 and December 15 has no effect as she did not claim benefits for the week. Moreover, she was

working a temporary job on those dates because Kimberly Distributing had not been providing her with the same number of hours of work as she had received in the past. Furthermore, the issue of whether she was available after December 17 is moot given the fact that she did not claim benefits after filing her additional claim effective December 17, 2006.

Ms. Schurch is now permanently separated from Kimberly Distributing. The issue of her separation has not been adjudicated by Workforce Development. Therefore, the matter shall be remanded to Claims for an investigation and determination regarding the January 12, 2007 separation.

DECISION:

The representative's decision dated January 12, 2007, reference 03, is hereby affirmed. Ms. Schurch satisfied the availability requirements of the law effective December 17, 2006. This matter is remanded to Claims for a determination regarding the January 12, 2007 separation from employment.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css