

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M THOMPSON
Claimant

APPEAL NO. 12A-UI-05880-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTRUST
Employer

OC: 04/01/12
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Lisa Thompson, filed an appeal from a decision dated May 8, 2012, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 13, 2012. The claimant participated on her own behalf. The employer, Intrust, participated by Human Resources Manager Nick Malcom.

ISSUE:

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

FINDINGS OF FACT:

Lisa Thompson was employed by Intrust beginning May 11, 2011, as a part-time home care aide. She was on a medical leave of absence from February 13 through March 30, 2012. When she returned to work on April 2, 2012, the census was low and there was no work for her to do.

Ms. Thompson maintains she was guaranteed 16 hours every week. But, that is not the case. The 16-hour quote is only the minimum number of hours an employee must work to maintain eligibility for benefits. The employer cannot guarantee minimum hours, because the amount of work is directly the result of the client census.

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.

The claimant was still employed in her part-time job as of the date she filed her claim effective April 1, 2012. There is no evidence of a guarantee of a minimum of 16 hours per week of work. Under the provisions of the above Administrative Code section, the claimant is not able and available and is ineligible for unemployment benefits.

DECISION:

The representative's decision of May 8, 2012, reference 03, is affirmed. Lisa Thompson is not able and available for work and is ineligible for unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw