

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN R SCHAU**  
Claimant

**APPEAL NO. 13A-UI-02292-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DILLON BENNER**  
Employer

**OC: 01/06/13**  
**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Dawn Schau, filed an appeal from a decision dated February 19, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 25, 2013. The claimant participated on her own behalf. The employer, Dillon Benner, participated by Co-Owner Nicole Benner and Manager Brenda Schrader.

**ISSUE:**

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

**FINDINGS OF FACT:**

Dawn Schau was employed by Dillon Benner beginning October 24, 2011 as a part-time cook/cashier. She took six months off in 2012 to work for her parents and returned to this employment in mid-December. She filed for unemployment benefits effective January 6, 2013, because she was not being scheduled for as many hours as before. This was due to her restricting the days she could work in any given 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".

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 did not make herself available for as many days per week in December 2012 and January 2013 as she had before she took the six-month personal leave of absence. The claimant was still employed part time as in the original contract of hire. Under the provisions of the above Administrative Code section she is not able and available for work and ineligible for benefits. .

**DECISION:**

The representative's decision of February 19, 2013, reference 01, is affirmed. Dawn Schau is not eligible for benefits as she is not able and available for work.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css