

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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EMPLOYER'S SERVICE BUREAU INC  
PO BOX 294  
CLINTON IA 52733 0294

Appeal Number: 04A-UI-10870-H2T  
OC: 07-25-04 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 4, 2004, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on November 18, 2004. The claimant did participate. The employer did participate through John Rosenberger and Richard Rosenberger, Co-Owners.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an assembly worker beginning on September 23, 2003 through September 24, 2004 when she voluntarily quit. The claimant filed a claim for benefits with an effective date of July 25, 2004. The claimant alleged that her hours at work were being reduced. The claimant was off work for stomach surgery that was not related to any work related illness or injury for

approximately two weeks in July 2004. The claimant had previously been off work for about six weeks from February through the mid to end of April for a work related injury. Her physician released the claimant to return to work full time on May 10, 2004. She returned to work at her regular hours and shift. The claimant was scheduled to work Monday through Thursday on the third shift. She was given the option to work Friday, Saturday and/or Sunday if she so chose. From late July 2004 forward until she quit in September 2004 the employer's records establish that the claimant was regularly turning down work offered to her and she was not working all of her scheduled hours. The claimant did not work all of the hours that were scheduled for her because she was calling off work for various reasons including illness.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective July 25, 2004.

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(1), (29) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The evidence establishes that the claimant's hours were reduced only because she was either incapable of working due to her non-work related illness or the claimant refused to work her regularly scheduled hours. Accordingly, benefits are denied effective July 25, 2004.

#### DECISION:

The October 4, 2004, reference 05, decision is affirmed. The claimant is not able to work and available for work effective July 25, 2004. Benefits are denied.

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