

**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**

**JENNIFER E GARCIA  
712 FAIR MEADOW DR  
WEBSTER CITY IA 50595-3024**

**KASTIM CORPORATION  
MCDONALD'S OF FORT DODGE  
#17678  
2640 DOLLIVER PARK AVE  
OTHO IA 50569-7559**

**Appeal Number: 06A-UI-07407-LT  
OC: 06-11-06 R: 01  
Claimant: Respondent (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)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

Employer filed a timely appeal from the July 14, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 9, 2006. Claimant participated with her spouse Sam Garcia. Employer participated through Paul Fields and Corey Kash. The issue is whether claimant is able to and available for work effective June 11, 2006.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a part-time cashier. She was dehydrated and was excused from work on Wednesday, June 14, 2006 and she called in sick on June 15. She worked a partial shift on June 16 and requested to go home early due to back pain. On June 17, employer told her to stay off work a week until she was feeling better. While employer told her she could call in and

work if she was feeling up to it, employer would not have allowed her to work as it considered her to have been suspended for disciplinary reasons from June 19 through 25, 2006. Claimant called in the presence of her husband and checked in with managers Pam Dee and Diane Baker who told her no work was available from Tuesday, June 20 through 25, 2006. She called on June 25 and said she was ready to work again and returned to work June 26. Her treating physician has released her to work with a permanent 15-pound lifting restriction due to congenital spina bifida. Claimant notified employer Cody Kash of the condition when she was hired.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Since claimant was able to and available for work the majority of the workweek ending June 17, 2006, the only week during which she filed a claim, benefits are allowed. Since she did not file a claim for benefits for the week ending June 24, 2006 while she was suspended, the issue as it pertains to unemployment insurance benefits is moot and will not be remanded.

DECISION:

The July 14, 2006, reference 01, decision is affirmed. The claimant was able to work and available for work the majority of the week ending June 17, 2006. Benefits are allowed.

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