

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY M SCHULTE
Claimant

APPEAL NO. 14A-UI-01269-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KPTOO INC
Employer

OC: 12/29/13
Claimant: Respondent (2)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 29, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 25, 2014, by telephone conference call. Although the claimant responded to the hearing notice, she did not answer her phone when called by the administrative law judge. Two phone calls were made to the claimant. The employer participated by Lynn Frank, store manager. The record consists of the testimony of Lynn Frank. Official notice is taken of agency records.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a McDonalds restaurant located in Sioux City, Iowa. The claimant was hired on August 22, 1990, as a part-time crew member. No hours were guaranteed when the claimant was hired. She is still employed by the employer. The claimant limits her availability for work to 7:00 a.m. to 2:00 p.m., Monday through Friday. As a result, she sometimes has fewer hours in the fourth quarter when less hours are available for the entire crew. Having fewer hours in the fourth quarter has been typical of the claimant's employment. This week she is scheduled to work 29 hours.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

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 is not eligible for unemployment insurance benefits. The evidence showed that the claimant is working the same hours as contemplated in the original contract of hire. She normally works less hours in the fourth quarter due to a combination of seasonal requirements and her unwillingness to be available for work at times when suitable work would be available for the claimant. Given these facts, the claimant is not able and available for work. Benefits are denied.

DECISION:

The decision of the representative dated January 29, 2014, reference 01, is reversed. Unemployment insurance benefits are not allowed effective December 29, 2013.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs