

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY A ENGELBART
Claimant

APPEAL NO. 11O-UI-01234-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EASTERN IOWA VISITING NURSES
AND HOME HEALTH CARE**
Employer

OC: 06/27/10
Claimant: Respondent (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Kathy Engelbart (claimant) appealed a representative's August 27, 2010 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits as of June 27, 2010, because she was self-employed while working for Eastern Iowa Visiting Nurses and Home Health Care (employer). An administrative law judge decision was issued on October 18, 2010 affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on January 31, 2011. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 28, 2011. The claimant participated personally. The employer participated by Linda Fanton, administrator.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant opened her own consignment store in September 2009. She consistently averages about 15 hours of work per week at the store. In addition, on September 27, 2010, the claimant started working 25 to 30 hours per week for Community Care.

The claimant filed her claim for unemployment insurance benefits on June 27, 2010.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

871 IAC 24.23(7) provides:

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

(7) Where an individual devotes time and effort to becoming self-employed.

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

When an employee is devoting time and effort to being self-employed, she is considered to be unavailable for work. Likewise, when an employee is working to such a degree as to remove her from the workforce, she is considered to be unavailable for work. The claimant was devoting her time and efforts to her own store. She is considered to be unavailable for work as of June 27, 2010. The claimant is disqualified from receiving unemployment insurance benefits due to her unavailability for work.

DECISION:

The representative's August 27, 2010 decision (reference 03) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits, because she is not available for work after June 27, 2010.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw