

**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**

**NANCY K SCHRIEFER
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BLUE GRASS IA 52726**

**THOMA ENTERPRISES INC
JACK & JILL STORES
PO BOX 1058
DURANT IA 52747 1058**

**Appeal Number: 04A-UI-01283-H2T
OC 12-07-03 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 28, 2003, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on February 16, 2004. The claimant did participate. The employer did participate through Brian Thoma, Store Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a front-end supervisor part-time beginning August 20, 2003 through date of the hearing. When the claimant was hired, she was not guaranteed of any amount of hours. The claimant had no set work schedule. The claimant complained to the scheduler, Bev, that she believed the Saturday shift was too long as it began at 10:00 a.m. or 11:00 a.m.

and did not finish until 8:00 p.m. or 8:30 p.m. Thereafter, the employer did not schedule the claimant for any additional Saturday shifts because they believed the claimant was no longer interested in working those shifts. The claimant's hours dropped because she was not working the Saturday shifts. The claimant was the person who complained to the scheduler about the shifts, thus reducing her own availability for work. The claimant's hours were reduced because she did not want to work a long shift on Saturday.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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(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.

The claimant's hours dropped because she did not want to work the long Saturday shift and she told the scheduler that. The claimant by making the employer believe that she would not work the long Saturday shift has unduly limited her availability for work. Accordingly, benefits are denied.

DECISION:

The January 28, 2004, reference 02, decision is affirmed. The claimant is not able to work and available for work effective December 7, 2003. Benefits are denied.

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