

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

AMELIA L BRIMEYER
APT 2
411 LOCUST ST
DUBUQUE IA 52001-6941

JAY AMBAMA INC
BEST INN
2670 DODGE ST
DUBUQUE IA 52003

Appeal Number: 06A-UI-01751-HT
OC: 01/08/06 R: 04
Claimant: Appellant (2)

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, Amelia Brimeyer, filed an appeal from a decision dated February 6, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 1, 2006. The claimant participated on her own behalf. The employer, Best Inn, participated by Manager Sonny Patel.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Amelia Brimeyer began working for Best Inn on January 21, 2001. She was hired as a "full time" housekeeper to work "as many hours as needed." To the employer a "full time" employee is one who is permanent rather than temporary, and may be called upon to work whenever work is available.

The hotel industry has two seasons, slow and busy. The busy season is between April and October, when an employee can expect to work as much as 40 hours or more. During the slow season between November and March, housekeepers can work as little as 10 hours per week. Ms. Brimeyer remains as a permanent employee of Best Inn and is available to work for the employer whenever needed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available. The judge concludes she is.

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".

The claimant remains as a regular, full-time, permanent employee of Best Inn. She was not hired for any specific number of hours and it is hard to establish what would constitute a reduced work-week basis. But given that part of her base period wages were earned in weeks where she worked 40 hours, and she is available to work that many hours at the present time, this "slow period" should be considered a reduced work-week. She is able and available for work.

DECISION:

The representative's decision of February 6, 2006, reference 01, is reversed. Amelia Brimeyer is able and available for work and eligible for benefits.

bgh/tjc