

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY B CONTE**  
Claimant

**APPEAL NO. 09A-UI-05615-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GUARDIAN FAMILY CARE INC**  
Employer

**Original Claim: 03/15/09  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 7, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 6, 2009. Claimant participated. Employer participated through Beverly Mital. Claimant's Exhibit A was admitted to the record.

**ISSUE:**

The issue is whether claimant is able to and available for work effective March 15, 2009.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant works as a part-time on-call home health care LPN. She was hired June 4, 2004 with no minimum hours of work guaranteed and was scheduled depending on her availability and employer's needs. A client died on March 5 and she was scheduled for fewer hours while employer sought other assignments for her because the available hours fluctuate daily because of the census changes. She is currently working 25 to 30 hours per week and may work additional hours if she is available. She had no other regular employment in the base period.

**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 24.22(2)i(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

871 IAC 24.22(2)i(3) 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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as needed, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus, any diminution in hours is directly related to the on-call availability when work is available, as no regular hours were guaranteed. Accordingly, benefits are denied.

**DECISION:**

The April 7, 2009, reference 01, decision is affirmed. The claimant is not considered unemployed because of her on-call employment status. Benefits are denied.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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