

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

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CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
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OMAHA NE 68106-0007

Appeal Number: 04A-UI-04066-BT
OC: 03/07/04 R: 02
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 for Work

STATEMENT OF THE CASE:

Amanda VanderLeest (claimant) appealed an unemployment insurance decision dated April 2, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she is still employed at the same hours and wages as in her original contract of hire with Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2004. The claimant participated in the hearing with her mother, Connie VanderLeest. The employer participated through Selena Selsor, Administrator; Terry Vasquez, Director of Nursing; and Representative Roxanne Bekeart.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a casual status CNA on August 24, 2001. Casual status does not provide any minimum or maximum hours; the claimant works when the employer has available hours, which also meet the claimant's availability. She continues to be employed in that same capacity with no change in her hours or wages, except for a wage increase.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

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(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 was hired as a casual employee with no guarantee of hours. There has been no separation from her on-call employment and she is currently working for this employer at the same hours as contemplated in her original contract of hire. Her wages have increased since her date of hire. The claimant is disqualified from receiving benefits from this employer.

DECISION:

The unemployment insurance decision dated April 2, 2004, reference 01, is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire and is therefore not qualified for benefits based on her casual status employment.

sdb/b