

**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**

**MARY J MCGREGOR
3130 – 9TH ST APT 111
ROCK ISLAND IL 61201**

**GUARDIAN FAMILY CARE INC
21743 - 282 AVE
PO BOX 37
LECLAIRE IA 52753**

**Appeal Number: 04A-UI-12219-S2T
OC: 10/03/04 R: 12
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:

Mary McGregor (claimant) appealed a representative's November 2, 2004 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits based on her employment with Guardian Family Care (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 9, 2004. The claimant participated personally. The employer participated by Beverly Mital, Chief Executive Officer.

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 on October 11, 2001, as a part-time on-call care giver. Her hours widely varied and she understood at the time of hire that her hours would vary.

On October 25, 2003, the claimant had surgery and was not released to return to work without restriction until July 2004. In July 2004, the claimant was working at a bar and was self-employed caring for an individual. The employer tried repeatedly to reach the claimant to offer her work but the claimant's telephone service lapsed.

In December 2004, the employer was able to contact the claimant and offered her work. The claimant overslept and did not appear for work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified for being unavailable for work. For the following reasons, the administrative law judge concludes she is.

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 an on-call worker and is still working on-call for the employer. She is still employed in an on-call position as was agreed to at the time she was hired. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work.

DECISION:

The representative's November 2, 2004 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work.

bas/tjc