

**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**

**JANE L OLSON
149 GAY ST
MANCHESTER IA 52057**

**COMFORT CARE MEDICARE INC
4027 GLASS RD NE
CEDAR RAPIDS IA 52402**

**Appeal Number: 04A-UI-11898-DWT
OC: 10/03/04 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 are 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 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Jane L. Olson (claimant) appealed a representative's November 1, 2004 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she restricted the area in which she would accept employment from Comfort Care Medicare, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2004. The claimant participated in the hearing with her witness, Susan Thobe. Catherine Boesen, the education coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

As of October 10, 2004, is the claimant eligible to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant applied to work for the employer because the employer had a client who lived 16 miles from the claimant's residence. After the claimant submitted her application by mail, the employer assigned the claimant to this client on August 26, 2003. The claimant started working for the employer at \$7.50 per hour, but she earned \$9.50 by the time the client passed away on September 29, 2004. The claimant worked 8:00 a.m. to 4:30 p.m. After the client passed away, the claimant contacted the employer for another job assignment.

When the claimant contacted the employer about another job, she placed restrictions on the assignments she would accept. The restrictions included a job assignment within 20 miles of the claimant's home and no overnight work. The claimant would accept \$8.50 an hour, but would like \$9.50 an hour. The employer only has current assignments that are 45 to 60 miles from the claimant's residence.

As of November 30, the employer has had jobs for the claimant that are more than 20 miles from her residence and one job that was an overnight job. The claimant does not want overnight work because she wants to make sure her 14-year old son gets to school on time. Although the claimant is married, her husband works in Dyersville and must leave home before her son has to go to school. The claimant's husband could not take the young man to school if the weather was bad.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work. Iowa Code §96.4-3. The regulation, 871 IAC 24.23(4), provides that a claimant cannot be held ineligible to receive unemployment insurance benefits if she restricts employability to the area of usual employment. The evidence establishes the claimant's usual employment area while working for the employer was within 20 miles of her home since late August 2003. Based on the claimant's employment record with the employer, her usual area of employment is within 20 miles of her home. Pursuant to 871 IAC 24.23(4), the claimant has not restricted her availability and remains eligible to receive unemployment insurance benefits as of October 10, 2004.

Since each week a claimant files a claim for benefits she must be able to and available for work, the longer the claimant remains unemployed she may have to limit her restrictions to become reemployed.

DECISION:

The representative's November 1, 2004 decision (reference 02) is reversed. The claimant is not ineligible to receive unemployment insurance benefits even though she has restricted her availability to work to her usual area of employment. The claimant remains eligible to receive unemployment insurance benefits as of October 10, 2004, provided she meets all other eligibility requirements.

dlw/pjs