

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASANDRA J CIAVARELLI
Claimant

APPEAL NO. 10A-UI-07333-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HEALTH SERVICES-IOWA CORP
Employer

**Original Claim: 04/18/10
Claimant: Appellant (5)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 12, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 7, 2010. The claimant participated. The employer participated by Aimee Kern, employee relations coordinator, and Colleen Syverson, nurse manager. The record consists of the testimony of Casandra Ciavarelli; the testimony of Aimee Kern; and the testimony of Colleen Syverson. Official notice is taken of agency wage records.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a hospital located in Mason City, Iowa. The claimant was hired on October 22, 2008, as a part-time rehab assistant in the skilled nursing acute rehabilitation section. As a part-time employee, the claimant was required to work 20 hours per week. On October 26, 2009, the claimant went to P.R.N status. She was going to school and had just become a mother. No hours are guaranteed as a P.R.N. employee, but an employee is able to turn down a request for work. The claimant did not have that flexibility as a part-time employee as she would be required to work regular hours. After going on P.R.N. status, the claimant did have hours made available to her on the weekends.

The skilled nursing unit underwent a restructuring on April 18, 2010. This was due to a decrease in the number of patients being served by the employer. Shifts were changed to twelve hours and those shifts ran from 6:00 a.m. to 6:00 p.m. and 6:00 p.m. to 6:00 a.m. The employer has not offered the claimant any hours since April 18, 2010. The claimant is still considered to be an employee of the employer. The claimant does not have wages from any other employer during her base period.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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:

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(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 § 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.

The evidence in this case established that the claimant went to P.R.N status on October 26, 2009. This change in status from part-time to P.R.N. was voluntary on the part of the claimant. As a result, the claimant had a new contract of hire with the employer. Because claimant was now 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 representative's decision dated May 12, 2010, reference 01, is modified without effect. The claimant is not eligible for unemployment insurance benefits.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw