

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NORMA J WESTBROCK**  
Claimant

**APPEAL NO. 11A-UI-12959-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY MEDICAL CENTER**  
Employer

**OC: 08/21/11**  
**Claimant: Appellant (1-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Norma Westbrook, filed an appeal from a decision dated September 26, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 25, 2011. The claimant participated on her own behalf. The employer, Mercy Medical Center, participated by Director of Human Resources Jerry Truemper.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Norma Westbrook began employment with Mercy Medical Center on April 27, 2010, as a part-time secretary. Her status is on-call, as needed without any guarantee of a minimum number of hours per day, per week, or per pay period. She continues in that status as of the date of the hearing.

The claimant is currently receiving emergency unemployment compensation benefits on a claim effective August 15, 2010, although she has earned wages since filing that claim.

**REASONING AND CONCLUSIONS OF LAW:**

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 base period wages for Ms. Westbrook's claim effective August 21, 2011, were all earned in the current, part-time, on-call, as-needed job position she currently holds. She is, therefore, still employed at the same hours and wages as in the original contract of hire. Under the provisions of the above Administrative Code section, she is ineligible for benefits.

**DECISION:**

The representative's decision of September 26, 2011, reference 01, is affirmed. Norma Westbrook is ineligible for unemployment benefits, as she is not able and available for work.

The issue of whether the claimant should be receiving emergency unemployment benefits on the August 15, 2010, claim is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw