

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAMIE ROHRER
Claimant

APPEAL NO. 07A-UI-02154-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHENANDOAH MEMORIAL HOSPITAL
Employer

**OC: 01/21/07 R: 01
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Mamie Rohrer (claimant) appealed an unemployment insurance decision dated February 19, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she is not able to work for Shenandoah Memorial Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 20, 2007. The claimant participated in the hearing. The employer participated through Linda Braden, Director of Human Resources. 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:

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

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 10, 1999 as a full-time certified nurse's aide working in home health. She works with patients who already have a weakened health condition. The claimant had a respiratory illness with a bad cough and two clients requested she not come into their homes while she was sick. The employer determined the claimant should not be working with anyone while she was sick. The claimant was not able to work from January 21, 2007 through February 10, 2007. She recovered from her illness and returned to work on February 13, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22.

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(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She had a respiratory illness with a bad cough and was not able to work with patients while she was sick. The claimant did not meet the availability requirements of the law for the three-week period ending February 10, 2007, and is not entitled to benefits during that same timeframe.

DECISION:

The unemployment insurance decision dated February 19, 2007, reference 01, is affirmed. The claimant was ill and unable to work. Benefits are denied for the three-week period ending February 10, 2007.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css