

**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**

**CAROL M MITCHELL
518 –11TH AVE S
CLINTON IA 52732**

**MERCY MEDICAL CENTER – CLINTON INC
C/O HUMAN RESOURCES
1410 N 4TH ST
CLINTON IA 52732**

**Appeal Number: 04A-UI-00407-DT
OC: 12/07/03 R: 04
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:

Carol M. Mitchell (claimant) appealed a representative's January 7, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Mercy Medical Center – Clinton, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 4, 2004. The claimant participated in the hearing. Diane Grantz 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:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on July 3, 1995. She worked full time (32 hours per week) in the employer's hospital housekeeping/environmental services department. She had been on an intermittent family medical leave from March 2003, returning June 21, 2003. She resumed her full-time schedule at that time.

In the fall of 2003, she discussed the possibilities of going part time (16 hours per week) with her supervisor. He indicated it would be difficult to do, but would be easier if she went to an on-call status first. On November 1 the claimant completed the request to go to casual/on-call status, citing the need to be home with her family and to be able to move into a part-time position. That status change became effective November 7, 2003.

The claimant did work when called, which was sporadic. On January 9, 2004, the claimant completed a request to move into an open part-time (16 hours per week) position. She learned on January 25 that she had gotten the position; her new work schedule begins on February 9, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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 24.22(2)f provides:

Benefits 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.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued

wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment during the same hours and for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

By the claimant's choice, as of November 7, 2003 she was not working the full-time hours that the employer had available to her. The fact that the employer did not immediately have a part-time position into which the claimant could transfer does not change the fact that it was the claimant's choice to pursue fewer hours. As she had determined to limit the total number of hours she was willing to work, she was not able and available for work as defined by law, and therefore not eligible for unemployment insurance benefits. 871 IAC 24.23(16).

DECISION:

The representative's January 7, 2004 decision (reference 01) is affirmed. The claimant is not able to work and available for work effective November 7, 2003. Benefits are denied

ld/b