

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LASHAWN M LARD**  
Claimant

**APPEAL NO. 11A-UI-13646-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HANDICAPPED DEVELOPMENT CENTER**  
Employer

**OC: 09/25/11**  
**Claimant: Appellant (1-R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 14, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 9, 2011. The claimant participated. The employer participated by Courtney Brankovic, CRS program director. The record consists of the testimony of Lashawn Lard and the testimony of Courtney Brankovic.

**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 claimant established an original claim for benefits with an effective date of September 25, 2011. The claimant was seeking partial unemployment benefits because her hours were reduced. For the week ending, October 1, 2011, the claimant worked 23 hours. For the week ending October 8, 2011, the claimant worked 27.5 hours. She had did not work any hours for the week ending October 15, 2011. The claimant's employment ended because the employer considered her a no-call/no-show for October 13, 2011; October 14, 2011; and October 15, 2011. The claimant did not come to work on October 11, 2011, because she had legal business. She refused to meet with her employer on October 12, 2011, as requested by the employer.

The claimant had been suspended for three days on September 9, 2011; September 10, 2011; and September 11, 2011. The claimant had been a residential counselor but changed to support staff. The claimant was also prohibited from working at a particular group home. These changes limited the available slots for the claimant to fill. The claimant was not available for work on Mondays, because she was going to school. She did not want to work on Sunday mornings. She also was not available to work overnight shifts.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The only issue in this case is whether the claimant is able and available for work for three weeks: the week ending September October 1, 2011; the week ending October 8, 2011; and the week ending October 15, 2011. There was a separation of employment on or about October 15, 2011.

The evidence in this case established that the claimant was placed on a suspension for three days on September 9, 2011, through September 11, 2011. In addition, the claimant went from working as a residential counselor to working as support staff. The claimant was also prohibited from working at a particular home. There were numerous disciplinary issues at this time. These restrictions, due to disciplinary issues, led to a reduction in hours because the employer did not have as many available shifts for the claimant and the claimant limited her availability. The most important limitation the claimant had was that she was not willing to work overnight shifts. Support staff employees are assigned to work overnight shifts at homes where residents required 24 hour supervision.

Had the claimant been available for overnight shifts, she would have been able to work the hours she worked prior to the disciplinary issues. In addition, she had limited availability for the week ending October 15, 2011, because she had legal proceedings on October 12, 2011. She normally worked on Tuesdays. The claimant then refused to meet with her employer, which in turn led to the events surrounding the separation of employment. The administrative law judge concludes that the claimant was not able and available for work for the weeks ending October 1, 2011; October 8, 2011; and October 15, 2011. This is because she was unwilling to work the hours in which suitable work was available.

Because there has now been a separation of employment, this case is remanded to the Claims Section to determine whether there is any disqualification due to the separation of employment.

**DECISION:**

The representative's decision dated October 14, 2011, reference 01, is affirmed. The claimant was not able and available for work for the weeks ending October 1, 2011; October 8, 2011; and October 15, 2011. This matter is remanded to the Claims Section to determine further eligibility based on the separation of employment that occurred on or about October 15, 2011.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw