

**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**

**KELLY J BAZE
304 E 1ST AVE #7
KELLERTON IA 50133**

**CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007**

**Appeal Number: 04A-UI-02760-AT
OC: 02-01-04 R: 03
Claimant: Appellant (4)**

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 – Eligibility for Benefits

STATEMENT OF THE CASE:

Kelly J. Baze filed a timely appeal from an unemployment insurance decision dated March 4, 2004, reference 01, which imposed an open-ended denial of benefits effective February 1, 2004 upon a finding that Ms. Baze was not willing to work the number of hours required in her occupation. After due notice was issued, a telephone hearing was held April 6, 2004 with Ms. Baze participating. Director of Nursing Tim Boswell testified for the employer, Care Initiatives, which was represented by Dawn Fox of Johnson & Associates.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Kelly J. Baze has been employed as a certified nursing assistant and certified medical aide by Care Initiatives since June 2003. She worked full-time hours until February 1, 2004. Between February 1 and March 3, 2004, her physician restricted her to working no more than 20 hours per week. Care Initiatives provided her with 20 hours of work per week during that time. As of March 3, 2004, the employer has provided Ms. Baze with 40 hours of work per week.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Baze was eligible for unemployment insurance benefits from February 1 through March 3, 2004. She was not.

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".

To be eligible for unemployment insurance benefits, an individual must be medically able to work. The evidence in the record establishes that during the weeks in question Ms. Baze was medically able to work only 20 hours per week. The evidence also establishes that her employer provided her with 20 hours of work per week. Since Ms. Baze could not have worked more than she did, she is not eligible for unemployment insurance benefits for the weeks in question.

DECISION:

The unemployment insurance decision dated March 4, 2004, reference 01, is modified. The claimant is ineligible for unemployment insurance benefits from February 1, 2004 through the week ending February 28, 2004 because she was not medically able to work more hours than were provided to her by her employer. She is currently ineligible for unemployment insurance benefits because she has returned to full-time employment.

b/b