

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE A NICHOLSON
Claimant

TRI-STATE NURSING ENTERPRISES INC
Employer

APPEAL 17A-UI-07369-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/18/17
Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the July 17, 2017, (reference 02) unemployment insurance decision that allowed benefits beginning June 18, 2017. The parties were properly notified about the hearing. A telephone hearing was held on August 8, 2017. Claimant did not participate. Employer participated through staffing supervisor David Roberts. Official notice was taken of the administrative record, including claimant's benefit payment history, claimant's weekly continued claims filing history, the fact-finding documents, and other unemployment insurance decisions, with no objection.

ISSUE:

Is the claimant able to work and available for work effective June 18, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a certified nursing assistant (CNA) from October 23, 2015, and was separated from employment on June 20, 2016. The administrative record reflects an unemployment insurance decision has not been issued on claimant's separation from this employer.

The employer is a staffing agency. The employer posts open positions and shifts that employees can review. Employees then select the positions/shifts they want to work. Claimant worked on a part-time basis for the employer. The employer prefers employees pick up at least eight hours a month, but it is not requirement.

The employer has a no-call/no-show policy that if an employee is a no-call/no-show for one shift, they are considered a voluntary quit. The employer does give employees twenty-four hours to contact the employer to explain the reason for the no-call/no-show. Claimant was aware of the policy.

On June 6, 2016, claimant confirmed that she would work a shift on June 18, 2016. Claimant was a no-call/no-show for her shift on June 18, 2016. The employer attempted to contact

claimant, but was unsuccessful. Claimant has not contacted the employer since June 6, 2016, when she confirmed the June 18, 2016 shift. On June 20, 2016, the employer determined claimant had separated from employment.

Mr. Roberts did not have any information regarding claimant's availability for work as of June 18, 2017. The administrative record reflects that during the fact-finding interview claimant indicated she is able and available for work. The administrative record reflects that during the fact-finding interview claimant indicated she is not under any type of medical care. The administrative record reflects for the weeks ending June 24, 2017, July 1, 2017, and July 8, 2017, claimant indicated on her continued claims filing that she was able and available for work. An unemployment insurance decision dated August 7, 2017 (reference 03) found claimant was able and available for work for work beginning July 9, 2017. An unemployment insurance decision dated August 7, 2017 (reference 04) found claimant was able and available for work beginning July 16, 2017. An unemployment insurance decision dated August 7, 2017 (reference 05) found claimant was able and available for work for work beginning July 23, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work for the period in question.

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".

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of

services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. The administrative record establishes claimant is able to work and available for work effective June 18, 2017. Accordingly, benefits are allowed effective June 18, 2017.

DECISION:

The July 17, 2017, (reference 02) unemployment insurance decision is affirmed. Claimant is able to work and available for work effective June 18, 2017. Benefits are allowed, provided claimant is otherwise eligible.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs