

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUE A SWEET**

Claimant

**APPEAL NO. 10A-UI-08402-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRESTVIEW ACRES INC**

Employer

**OC: 09/27/09**

**Claimant: Appellant (3)**

Section 96.5(1) – Quit

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Sue Sweet, filed an appeal from a decision dated June 7, 2010, reference 06. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 29, 2010. The claimant participated on her own behalf. The employer, Crestview Acres, participated by Administrator Steve Hackbarth.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer and whether she is able and available.

**FINDINGS OF FACT:**

Sue Sweet was employed by Crestview Acres beginning July 27, 2009. She was hired as a part-time registered nurse working a Saturday and Sunday package. Her last day of work was January 4, 2010, at which time she made a medication error for which she gave a written warning on January 5, 2010. She talked with the DON Jennie on January 6 and 13, 2010, and notified her that she could no longer continue to work both Saturdays and Sundays because of personal medical problems and that she was a full-time student. Ms. Sweet offered to work one weekend day and one day during the week, but the DON declined because the agreement at the time the claimant was hired was for her to work both Saturdays and Sundays each week.

Ms. Sweet was off work due to illness from January 4 through 23, 2010. She called the DON on January 22, 2010, to say she had been released to return to work by her doctor. Jenny told her she did not need to report to work that weekend, because she had been replaced with someone who was willing to work the entire weekend package. It was suggested she might go PRN and the claimant signed papers agreeing to the change in status on January 28, 2010.

The claimant continued filing a weekly claim for unemployment benefits on January 9, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant quit her job as a weekend package RN with this employer effective January 28, 2010, when she elected to go PRN, and is still employed in that capacity. She accepted that option because she was no longer willing to work the hours she agreed to when she was hired. She was unable to work due to illness from January 4 through 22, 2010, and was therefore not able and available for work and ineligible for benefits.

Ms. Sweet is still considered an employee on PRN status at Crestview Acres. As a PRN, there is no guarantee of hours and she is therefore still employed to the same extent as she was hired in that position on January 28, 2010. Under the provisions of the above Administrative Code sections, she is ineligible for unemployment benefits effective January 9, 2010.

**DECISION:**

The representative's decision of June 7, 2010, reference 06, is modified in favor of the respondent. The claimant is ineligible for benefits effective the week ending January 9, 2010.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw