

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A WEST
Claimant

APPEAL NO. 10A-UI-11583-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 07/04/10
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 11, 2010, reference 01, decision that denied benefits effective July 4, 2010 based on an agency conclusion that the claimant was not able to perform work. After due notice was issued, an in-person hearing was held on October 6, 2010. Claimant participated. The employer did not appear for the hearing or request a postponement of the hearing. Exhibits A through D were received into evidence.

ISSUE:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Patricia West started her employment with Mercy Hospital in 1993 and most recently performed work for the employer on December 28, 2009. Ms. West was employed as a part-time licensed practical nurse in the Urgent Care department at Mercy East. Ms. West generally worked 4:00 p.m. to 9:30 p.m. or 10:00 p.m. She generally worked three shifts per week. She averaged 40 hours per two-week pay period. Ms. West had no other employment while she worked for Mercy Hospital. Ms. West's immediate supervisors were Barb Fremming, Nursing Manager, and Joanie Stuart, Office Manager.

Ms. West suffers from chronic back pain. Effective December 28, 2009, Ms. West went off work pursuant to the employer's short-term disability program. That program allows an employee to be off work six months, but no longer. Ms. West was not eligible for leave under the Family and Medical Leave Act because she had not worked the requisite number of hours. While Ms. West was off work, she was required to provide the employer a medical update every two months. Ms. West primary care physician is Ihla Chandani, M.D. This is the doctor who took Ms. West off work in December 2009. This doctor also referred Ms. West for further evaluation and treatment. Ms. West sought evaluation and treatment through an orthopedic specialist. Ms. West underwent an MRI that revealed her back was in poor condition.

Pursuant to the employer's short-term disability leave program, Ms. West was expected to return to the employment on June 28, 2010. Three weeks before that date, Ms. West contacted Nursing Manager Fremming by leaving a note that indicated she would like to discuss being placed back on the schedule and desired a phone call from Ms. Fremming. Ms. West did not receive a response from Ms. Fremming.

On June 9 Ms. Stuart, Office Manager, telephoned Ms. West and told her the employer had no place for her at the clinic. Ms. Stuart did not indicate why. Ms. West asked whether she could remain as an on-call employee. Ms. Stuart indicated she would get back to Ms. West with a decision. At the time of the contact, Ms. West had not yet been released to return to work.

Ms. West's doctor did not want her to return to work in the urgent care area. Ms. West's doctor had restricted her to lifting more than 10 or 20 pounds.

On June 14, 2010, Ms. Stewart left a message for Ms. West, that the medical director did not want another on-call nurse.

Ms. West met with her primary care physician on June 15, 2010 to discuss her return to work. She discussed with her doctor the employer's decision to not allow her to return to Mercy East Clinic. Ms. West did not at that time obtain a note releasing her to return to work.

Ms. West provided a note from her doctor, dated August 23, 2010. The note indicates that Ms. West was seen on June 15, 2010 for a follow-up visit relating to back pain and that the doctor gave Ms. West permission to return to work with limited hours as of July 1, 2010. Ms. West had already been performing work during a similar limited hours arrangement prior to commencing her leave of absence in December 2009.

On June 29, the employer sent Ms. West a letter memorializing her June 28, separation from the employment. The letter indicated that Ms. West was eligible for rehire, but would have to apply for and be selected for a position in order to return to the employment.

Ms. West established a claim for unemployment insurance benefits that was effective July 4, 2010. Since Ms. West established her claim for benefits, she has made two employer contacts per week as part for work search. She has focused her work search on nursing positions.

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".

Ms. West has presented evidence indicating that she was released to return to work by her primary care physician effective July 1, 2010. She was released to return to the same sort of limited, part-time hours she had worked prior to commencing her leave of absence in December 2009. Effective July 4, 2010 Ms. West meets the work ability and availability requirements of Iowa Code section 96.4(3) and is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's August 11, 2010, reference 01, is reversed. The claimant has been able and available for work since establishing her claim for benefits. Accordingly, the claimant is eligible for benefits effective July 4, 2010, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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