

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANA Y MARTINEZ

Claimant

APPEAL NO: 12A-UI-05321-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI-STATE NURSING ENTERPRISES INC

Employer

OC: 04/15/12

Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Ana Y. Martinez (claimant) appealed a representative's May 4, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits as of April 15, 2012 as she was not able and available for work with Tri-State Nursing Enterprises, Inc. (employer) because of attending school. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on May 30, 2012. At the time for the hearing but in lieu of the hearing being held, the administrative law judge indicated and the parties agreed that no hearing was necessary and that a decision could be made on the record. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant had originally established an unemployment insurance benefit year effective April 18, 2010. The claimant had applied for and been granted department-approved training (DAT) for various periods since establishing her claim, most recently by a representative's decision issued on January 12, 2012 (reference 08). That decision allowed DAT status through the claimant's current course of studies, through May 19, 2012.

The claimant was required to establish a new claim year effective April 15, 2012. When the claims representative was reviewing the claimant's status, the representative overlooked the fact that the prior representative's decision was applicable into the new claim year. The claimant understands that after May 19 she needs to resume fuller availability for work with the employer until such time as she might again enter into new training and again be granted DAT status. Under the claimant's new benefit year, her weekly benefit amount is \$81.00; since April 15, 2012, she has consistently been working and earning wages of over \$96.00.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. A claimant must generally remain available for work on the same basis as when her base period wages were accrued. 871 IAC 24.22(2)f. An exception exists for a person who is actively participating in department-approved training. The claimant was enrolled in DAT through May 19 and therefore was exempt from being able and available for work under her prior pattern of availability. Iowa Code § 96.4(6); 871 IAC 24.39. Therefore, the disqualification issued in the representative's May 4, 2012 decision is not correct.

The administrative law judge notes that the question in this case is somewhat moot, in that since April 15, 2012, the claimant is consistently earning more than the \$96.00 earning threshold applicable to her current benefit year under which she might be eligible to receive any partial benefits, and so has not had any remaining benefit eligibility. Iowa Code § 96.3-3.

DECISION:

The representative's May 4, 2012 decision (reference 01) is modified in favor of the claimant. Through May 19, 2012, the claimant was exempt from the requirement that she be able to work and available for work on the same basis as her prior employment, because she had previously been granted department-approved training status through that date. The claimant would be qualified to receive unemployment insurance benefits, if she was otherwise eligible; she is not currently otherwise eligible, as her earnings have been in excess of her earnings allowance.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw