

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELIA L HILLIARD
Claimant

APPEAL NO. 12A-UI-15196-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBS STAFFING LLC
Employer

OC: 06/24/12
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated December 19, 2012, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 29, 2013. The claimant participated personally. The employer participated by Brad Ortmeier, owner. The record consists of the testimony of Angelia Hilliard; the testimony of Brad Ortmeier; and Claimant's Exhibits A-J.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a medical staffing agency. The claimant is an on-call employee for the employer. The claimant has worked for the employer at different times, the most recent start date being July 2012. The claimant's last day of work was October 19, 2012. The claimant called off for a scheduled work day on October 22, 2012. She has not worked for the employer since that date. She has not responded to any inquiries from the employer on her availability.

The claimant sought medical attention for chronic neck pain. She was also hospitalized for an allergic reaction in late October 2012. She is under the care of a physician for high blood pressure and chronic neck pain. She believes that she is restricted from any activity that requires the use of her upper extremities to lift. The medical records state that she is to avoid heavy lifting, any work that may risk a fall from height and dust fumes. (Exhibit C) The claimant is unable to work as a certified nursing assistant. She was further injured in an automobile accident on December 28, 2012.

REASONING AND CONCLUSIONS OF LAW:

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 is not eligible for unemployment insurance benefits. The evidence showed that the claimant is still employed by the employer as an on-call employee. The claimant was hired as an on-call employee by the employer and she remains in that status. The claimant has not accepted any assignments from the employer since October 19, 2012. She does not respond to any inquiries from the employer on her availability. The claimant has multiple medical problems and is unable to work for the employer at this time. Since the claimant is still employed at the same hours and wages as her original contract for hire, she is not partially unemployed and she is not able and available for work. Benefits are denied.

DECISION:

The decision of the representative dated December 19, 2012, reference 02, is affirmed. The claimant is not able and available for work as of October 21, 2012.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs