

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER M MARSHALL
Claimant

APPEAL NO. 12A-UI-14337-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 09/09/12
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Heather Marshall, filed an appeal from a decision dated December 4, 2012, reference 04. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 10, 2013. The claimant participated on her own behalf. The employer, Genesis Health Systems (Genesis), participated by Human Resources Assistant Leann Ferguson.

ISSUE:

The issue is whether the claimant able and available for work.

FINDINGS OF FACT:

Heather Marshall began employment with Genesis on January 9, 2012, as a part-time CNA working 24 hours per week. In October 2012 she requested to go on a “per diem” basis, which means she worked “as needed” and was not guaranteed any specific number of hours per week or per pay period. She restricted her availability to Tuesdays, Thursdays and every other weekend. She requested this because she had accepted an internship for one of her academic classes.

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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant voluntarily reduced her availability to the employer from part time to on call, but only on certain days. She is not available during the regular hours when per diem employees would normally be needed. Under the provisions of the above Administrative Code section the claimant is not able and available for work and is not eligible for unemployment benefits.

DECISION:

The representative's decision of December 4, 2012, reference 04, is affirmed. Heather Marshall is not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css