

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACI A WAGNER

Claimant

APPEAL NO. 08A-UI-07070-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC

Employer

**OC: 06/22/08 R: 02
Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Traci Wagner, filed an appeal from a decision dated July 29, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 19, 2008. The claimant participated on her own behalf and was represented Attorney at Law Melissa Nine. The employer, Grandview Heights, participated by Human Resources Manager Craig Koonce and Administrator Tom Hoskins.

ISSUE:

The issue is whether the claimant is able and available.

FINDINGS OF FACT:

Traci Wagner was employed by Grandview Heights from July 14, 2002 as a full-time restorative aide. Her job duties required her to “ambulate” patients, both as part of physical therapy and escorting them to and from various locations within the facility. She would also do range of motion and other types of therapy under the supervision of a nurse and/or therapist.

On June 10, 16, and 24, 2008, she had episodes at work where she lost consciousness and had to be transported to the hospital in an ambulance. On the first two occasions, she was unconscious for approximately 15 minutes and on the third occasions it was three hours. She had been seeing a neurologist since January 2008 for high blood pressure and was on various medications.

Administrator Tom Hoskins spoke with the claimant and her husband immediately after the June 24, 2008, episode. The emergency rooms doctors had all released her to return to work without restrictions after each episode. However, because the episodes kept occurring even after the releases, the employer was concerned for the health and safety of Ms. Wagner and the residents. If she lost consciousness while ambulating a resident, she could fall, and could cause the resident to fall, which could result in injury to either or both. In addition, she could fall onto a resident while doing some of the range of motion therapies and cause injuries.

Mr. Hoskins informed Ms. Wagner she could not return to work until he had a statement from a doctor who had done more than simply see her in the emergency room. He wanted a diagnosis and other more detailed information about her condition and the likelihood of further episodes of unconsciousness. As of the date of the hearing, the claimant had not provided sufficient information

to the employer but asserted she had not had any further episodes after June 24, 2008, because her blood pressure medication had been changed.

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".

The employer's primary responsibility is to provide a safe environment for the elderly, dependent residents under its care. The claimant, through no fault of her own, jeopardized the employer's ability to provide such care. Although Ms. Wagner was released to return to work without restrictions by the emergency room doctors, the administrative law judge cannot give much weight to these. The releases were given only after an examination in the emergency room and not by a doctor who had been treating Ms. Wager for some period of time and was fully cognizant of the situation. In any event, after the releases, the episodes kept occurring, which is another reason they cannot be given much weight.

The claimant has the ability to return to work after providing the employer with comprehensive information from her treating specialists and physicians that she is free from these episodes of unconsciousness and able to perform all the essential functions of her job as required by the provisions of Hedges v. IDJS, 368 N.W.2d (Iowa App. 1985). Until such information is provided, she must be considered ineligible for benefits due to not being able and available for work.

DECISION:

The representative's decision of July 29, 2008, reference 01, is affirmed. Traci Wagner is not eligible for unemployment benefits, as she is not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw