

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PAMELA R SMITH
PO BOX 192
ADEL IA 50003**

**DALLAS CENTER MEDICAL ASSOCIATES
507 – 14TH ST
PO BOX 511
DALLAS CENTER IA 50063-0511**

**Appeal Number: 04A-UI-03146-AT
OC: 02-15-04 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Eligibility for Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Dallas Center Medical Associates filed a timely appeal from an unemployment insurance decision dated March 12, 2004, reference 03, which allowed benefits to Pamela R. Smith. After due notice was issued, a telephone hearing was held April 9, 2004 with Ms. Smith participating. Dr. Ron McHose, DO, participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Pamela R. Smith was hired as a part-time receptionist by Dallas Center Medical Associates, PC in March 2003. At the end of

January 2004, the employer altered her status by making her an on-call employee because of poor attendance. Ms. Smith filed a claim for unemployment insurance benefits effective February 15, 2004. The employer has offered her no hours since that date.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Smith is eligible for unemployment insurance benefits. It does.

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 evidence in the record establishes that Ms. Smith is working reduced hours at the employer's choice and that the employer has offered her no hours of work since February 15, 2004. Under these circumstances, Ms. Smith meets the definition of an unemployed individual. Since the employer has offered no hours, there is no evidence to indicate that Ms. Smith is either medically unable to work at this time or is unavailable for hours.

The administrative law judge declined to take evidence on the issue of misconduct. A claimant is disqualified if he or she has been discharged from employment because of misconduct in connection with the work. See Iowa Code Section 96.5-2a. The parties agree, however, that Ms. Smith has not been discharged. It would be premature for the administrative law judge to conduct a misconduct analysis unless or until there has been a discharge.

DECISION:

The unemployment insurance decision dated March 12, 2004, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

tjc/b