

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FANNY BOMANDEKE**  
Claimant

**APPEAL NO: 10A-UI-08166-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COTTAGE GROVE PLACE**  
Employer

**OC: 04/18/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Fanny Bomandeke (claimant) appealed an unemployment insurance decision dated May 28, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she is not available for work with Cottage Grove Place (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 26, 2010. The claimant participated in the hearing. The employer participated through Cindy Hawkins, Human Resources Director. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nursing assistant from August 21, 2009 through February 21, 2010. At that time, she reduced her hours to prn or as-needed status because she was going to school full-time. The employer never guaranteed her any hours and the claimant knew that when she dropped from full-time status. She is currently unable to work due to a back injury.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

Iowa Code § 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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She voluntarily reduced her full-time hours to an as-needed status because she is going to school full time. Additionally, she is suffering from a back injury and is not medically able to work at this time. The claimant does not meet the availability requirements and benefits are denied as of April 24, 2010.

#### **DECISION:**

The unemployment insurance decision dated May 28, 2010, reference 01, is affirmed. The claimant does not meet the availability requirements and benefits are denied.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/pjs