

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE M BURKE

Claimant

APPEAL NO: 09A-UI-06749-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW HAMPTON CARE CENTER INC

Employer

OC: 09/14/08

Claimant: Appellant (5/R)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Diane M. Burke (claimant) appealed a representative's April 24, 2009 decision (reference 04) that concluded she was not eligible to receive benefits March 22, 2009, through March 21, 2009, because her physician restricted her from working these dates (There is an obvious typographical error in the representative's decision.) After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2009. The claimant participated in the hearing. Patrick Ogden, the administrator, appeared on the employer's behalf. 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:

Was the claimant able to or available for work during dates her physician restricted her from working?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of September 14, 2008. The claimant began working part-time for the employer on February 16, 2009.

The claimant did not feel well and went to her doctor on February 18 and 20. The claimant's doctor restricted her from working February 20 through March 8, 2009. The claimant returned to work as scheduled on March 9. She filled in for someone else on March 10, 2009. The claimant again felt ill and learned she had the flu. The claimant's physician restricted her from working March 11 through 22, 2009. The claimant returned to work on March 23 and has continued to work part-time for the employer.

The claimant filed claims for the weeks ending February 28 and March 7, 2009.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. The law presumes a claimant is not available for work when a physician restricts a claimant from working. 871 IAC 24.23(6).

Based on her physician's work restrictions, the claimant is not available for work the weeks ending February 28 through March 22, 2009. As a result, the claimant is not legally entitled to receive benefits for the weeks ending February 28 and March 7, 2009. Since the claimant received benefits during these weeks, the issue of overpayment is remanded to the Claims Section.

DECISION:

The representative's April 24, 2009 decision (reference 04) is modified. The claimant was not available for work the weeks ending February 28 through March 22, 2009. Therefore, she is not eligible to receive benefits for these weeks. Since the claimant received benefits for the weeks ending February 28 and March 7, 2009, the issue of overpayment is remanded to the Claims Section.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs