

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HILARY J KIEVIT**  
Claimant

**APPEAL NO. 10A-UI-08208-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREAT RIVER MEDICAL CENTER**  
Employer

**OC: 02/21/10**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Hilary Kievit (claimant) appealed a representative's May 28, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was still employed at the same hours and wages with Great River Medical Center (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 personally. The employer participated by Carrie Nudd, Human Resources Generalist.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable for 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 hired on December 26, 2007, as an on-call registered nurse. She worked as needed until May 21, 2010. The claimant moved three hours away on May 23, 2010. The claimant filed for unemployment insurance benefits with an effective date of February 21, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 24.22(2)i(1) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

871 IAC 24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as needed, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call availability when work is available as no regular hours were guaranteed. Accordingly, benefits are denied.

**DECISION:**

The May 28, 2010, reference 01, decision is affirmed. The claimant is not considered unemployed because of her on-call employment status. Benefits are denied.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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