

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

SANDRA D WORTHY
620 OAK ST
ELMA IA 50628

COLONIAL MANOR OF ELMA INC
407 – 9TH ST
ELMA IA 50628-8217

Appeal Number: 04A-UI-09044-S2T
OC: 01/18/04 R: 02
Claimant: Appellant (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 – Able and Available

STATEMENT OF THE CASE:

Sandra Worthy (claimant) appealed a representative's August 18, 2004 decision (reference 07) that concluded she was not eligible to receive unemployment insurance benefits because she was still working on an on-call basis with Colonial Manor of Elma, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2004. The claimant participated personally. The employer participated by Debra Vondersitt, Administrator.

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 January 27, 2004, as a part-time housekeeper. On March 22, 2004, the claimant requested she work as a certified nurses' aide. The employer granted the claimant's request. On or about July 12, 2004, the claimant filed a grievance against the employer regarding reprimands. In connection with the grievance she requested on-call status. The employer granted the claimant's new request. The employer has not needed on-call workers since July 12, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified for being unavailable for work. For the following reasons the administrative law judge concludes she is.

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time worker. She requested that her status be changed to on-call work and is still employed in that capacity for the employer. She asked that those part-time hours be changed. The change in hours was initiated by the claimant. She is still employed in a part-time on-call position as was agreed to at the time she was re-negotiated her contract for hire. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work.

DECISION:

The representative's August 18, 2004 decision (reference 07) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work.

bas/pjs