

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FELICIA D SHARP
Claimant

APPEAL NO. 09A-UI-17228-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARRINGTON PLACE OF
MUSCATINE LLC**
Employer

OC: 09/27/09
Claimant: Appellant (2-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Felicia Sharp, filed an appeal from a decision dated November 2, 2009, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 21, 2009. The claimant participated on her own behalf. The employer, Carrington Place, participated by DON Donna Stewart and Executive Director Karolee Coppoc.

ISSUE:

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

FINDINGS OF FACT:

Felicia Sharp was employed by Carrington Place beginning August 20, 2007. She was hired as a full-time CNA and CMA. Full time for this employer is 32 hours per week. She requested to go part-time, reducing her availability to 20 to 24 hours per week effective October 1, 2009, and the employer granted her request. This was in order to complete the clinical portion of her education for a nursing degree. She then filed a claim for unemployment benefits effective September 27, 2009.

Ms. Sharp has been granted division approved training from September 27, 2009 through February 20, 2010.

Her employment has ended effective October 29, 2009, but the separation has not yet been adjudicated.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Code section 96.4-6-a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

The claimant has been granted division approved training by Iowa Workforce Development beginning with the effective date of her claim. Under the provisions of the above Code Section she is not required to be able and available for work during the period of division approved training.

Her separation from this employment may be a disqualifying issue and should be remanded to UIS division for determination.

DECISION:

The representative's decision of November 2, 2009, reference 02, is reversed. Felicia Sharp is eligible for benefits, provided she is otherwise qualified.

The issue of whether the claimant is qualified for unemployment benefits as a result of her separation from employment is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css