

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY L KELLOGG

Claimant

APPEAL NO. 11A-UI-04182-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLONIAL MANOR OF COLUMBUS JCT

Employer

OC: 02/06/11

Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Misty Kellogg, filed an appeal from a decision dated March 25, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 26, 2011. The claimant participated on his own behalf. The employer, Colonial Manor, participated by Business Office Manager Molly Bausch.

ISSUE:

The issue is whether the claimant is able and available for work with her regular employer.

FINDINGS OF FACT:

Misty Kellogg began employment with Colonial Manor on June 3, 2009, as a part-time CNA. She was not guaranteed any minimum number of hours per week or per pay period as the staffing need depended on the census of the facility.

On February 6, 2011, she filed a claim for unemployment benefits because hours throughout the facility had been reduced. On February 28, 2011, she presented a medical restriction from Dr. Joseph Kowalski indicating she could no longer do any “heavy lifting.” No specific amount of weight was listed but Ms. Kellogg believes she could not lift more than 25 to 50 pounds.

As a normal part of her job duties as a CNA she must lift and reposition residents. She is also responsible for using a “gait belt” to help residents walk and must apply some lifting motion to ease the resident to the floor should they begin to fall.

The employer has no way of guaranteeing the claimant would not be called upon during the course of a work shift to lift, reposition or assist in preventing a fall of one of the residents.

REASONING AND CONCLUSIONS OF LAW:

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(29), (35) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The claimant is not able and available to work the number of hours the employer has available because of her medical restrictions. A significant portion of her duties as a CNA require her to be able to lift and reposition residents and to assist by exerting a lifting pressure should one of them start to fall. This would not be possible without violating the restrictions imposed by her doctor.

DECISION:

The representative's decision of March 25, 2011, reference 01, is affirmed. Misty Kellogg is ineligible for benefits because she is not able and available for work for her regular employer.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs

