

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLI ANDERSON
Claimant

APPEAL NO: 13A-UI-04239-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES
Employer

OC: 02/24/13
Claimant: Appellant (2)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Kelli Anderson (claimant) appealed an unemployment insurance decision dated March 29, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was limiting her availability to work with Heartland Employment Services, LLC (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2013. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to 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 as a full-time licensed practical nurse on December 30, 2011 and is currently working for the employer at reduced hours. She was working 32 to 36 hours per week until December 2012 when the new administration cut her hours down to four per week. The claimant does go to school but is available to work overnight shifts on six days per week, morning shifts on five days per week and afternoon shifts on four days per week. She admitted she is not available to work when called minutes before she is expected to be at work.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. It is her burden to prove her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

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(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Although the claimant is attending school, it is not preventing her from working full-time hours. She does meet the availability requirements of the law and benefits are allowed.

DECISION:

The unemployment insurance decision dated March 29, 2013, reference 01, is reversed. The claimant meets the availability requirements of the law and qualifies for benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs