

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA J KOCH**

Claimant

**APPEAL NO. 09A-UI-15804-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**

Employer

**OC: 09/13/09**

**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 15, 2009 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 18, 2009. Claimant participated. Employer participated through Administrator April Jennings and DON Shanna Geerdes and was represented by Lynn Corbeil of Johnson & Associates. Employer's Exhibits 1 and 2 were admitted to the record.

**ISSUE:**

The issue is whether claimant is able to and available for work effective September 13, 2009.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part time as a charge nurse. Her last day of work as a full-time charge nurse was June 10, 2009. She attempted to continue working in that capacity but was unable to do so after she became ill on June 9, 2009. Her illness, diagnosed on July 31, 2009 as "muscle weakness, fatigue and pain" is not work related. (Employer's Exhibit 1) She opted to have employer place her on prn, casual, or on-call status on July 20, 2009. She is not able to work her regular full-time hours or perform her regular job duties as a charge nurse. She is looking for work as a clinic nurse while working occasionally on prn status with Care Initiatives. She has declined to work or failed to return employer's calls for other work assignments since August 5, 2009. She has not gone into the facility to seek available shifts. Employer does not provide light-duty employment for employees with non-work-related illness or injury. She did not provide employer with any medical restrictions but the Family Medical Leave Act (FMLA) document indicated the duration of the illness is "uncertain" and that she would "perhaps" be required to work less than a full schedule. (Employer's Exhibit 1) Dr. Michael Stassen released her to return to "work as needed" on August 5, 2009. (Employer's Exhibit 2)

**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 § 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 § 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 requested to work only on-call or as needed, she is not considered to be unemployed within the meaning of the law. When an individual arranges 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 are guaranteed.

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

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

(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.

Inasmuch as the medical condition is not work-related and the treating physician has not released her to return to work without restriction, the claimant has not established her ability to work as an employee of Care Initiatives other than on prn status. Employer is not obligated to accommodate a non-work-related medical condition, and since she has not been released to perform her full work duties, she is not considered able to or available for work effective September 13, 2009. Accordingly, benefits are denied.

**DECISION:**

The October 15, 2009 (reference 01) decision is affirmed. The claimant is not considered unemployed because of her on-call employment status and is not considered able to or available for her regular work because of the restrictions related to her non-work-related illness. Benefits are denied.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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