

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE DRYER**

Claimant

**APPEAL NO: 10A-UI-16850-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND HOME CARE INC**

Employer

**OC: 02-21-10**

**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 3, 2010, reference 06, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 26, 2010. The claimant participated in the hearing. Brenda Wilhelm, Case Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time LPN by Heartland Home Care April 22, 2010. She was hired to work nights and was not guaranteed a certain number of hours. The employer makes the monthly schedule about six weeks in advance. On September 8, 2010, the client's mother asked that the claimant not return to care for her sons because she was rude and loud. She had been working 36 hours per week, from 8:00 p.m. to 8:00 a.m., at that location. The claimant then asked about working days and was told to send the employer a note about when she could work. In the meantime she was scheduled to work at client Danny's home and client Tyler's home. On September 17, 2010, the claimant e-mailed the employer and said she could no longer work with Tyler, with whom she averaged two 12-hour shifts per week while also working for Danny 28 hours per week, all at night. She also stated she could no longer work Tuesdays, Fridays and Saturdays, because she and her daughter bowled on Tuesday and Saturday. On September 24, 2010, the claimant talked to the administrator and planned to tell her she could work a couple days per week with Tyler and a couple of days per week with Danny. The employer responded that there was no guarantee of hours and clients cannot choose their nurse and continued to schedule her on the night shift. The claimant worked six more nights with Tyler in October 2010 and worked with Danny November 5, 2010. The employer has not scheduled her since that time because she stated she wanted day hours and those shifts were already filled and the employer did not believe it was fair to change the hours of the other employees who worked days and was under the impression the claimant could not

work Tuesdays, Fridays and Saturdays, which unduly limited her availability for work. The claimant has not called for hours or to see if the employer has any new clients since November 6, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire.

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".

The claimant was hired as a part-time LPN. There has been no separation from her part-time employment. The claimant was hired to work nights but changed her availability to days and stated she could not work Tuesdays, Fridays or Saturdays. The employer has all of its day shifts covered and has a need for night workers. The employer could not simply find day hours for the claimant and bump the current employees who were hired to work days because the claimant changed her availability. The claimant's decision to work days resulted in the change in her hours; the change was not the result of any action by the employer. Consequently, the administrative law judge concludes that the claimant is not working the same hours due to the fact that she wanted to move from nights to days and said she was not available Tuesdays, Fridays or Saturdays. The claimant is not available for the hours she was hired for. Therefore, benefits are denied.

**DECISION:**

The December 3, 2010, reference 06, decision is affirmed. The claimant is not working the same hours due to stating she wanted to work days rather than nights as stated in the original contract of hire. Benefits are denied.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs