

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY C BOWMAN
Claimant

APPEAL NO. 078A-UI-06853-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED HOME HEALTH CARE LTD
Employer

**OC: 06/22/08 R: 04
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.7(2)(a)(2) – Employer Liability

STATEMENT OF THE CASE:

Cathy Bowman filed a timely appeal from the July 25, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 12, 2008. Ms. Bowman participated. Barb Nelson, Administrator, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-06854-JTT.

ISSUES:

Whether Ms. Bowman met the work availability requirements of Iowa Code section 96.4(3) during the period when she was unable to report to work due to flooding along the Mississippi River.

Whether Ms. Bowman met the work availability requirements of Iowa Code section 96.4(3) from the time the Burlington Bridge reopened to the time the employer placed her back on the work schedule.

Whether the employer's account may be charged for benefits paid to Ms. Bowman.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cathy Bowman started her employment with Advanced Home Health Care in 2005 and continues in the employment. Ms. Bowman is a Certified Nursing Assistant (CNA). Ms. Bowman was hired on a p.r.n. or as needed basis, but has generally worked an average of 32 hours since the employment began. Ms. Bowman lives in Carman, Illinois. The workplace is in Burlington, Iowa. Ms. Bowman's usual journey to work from Carman to Burlington was approximately ten miles one way.

Throughout the employment, Ms. Bowman has utilized the Burlington Bridge to cross the Mississippi River and get to work. On June 16, 2008, the Burlington Bridge was closed as a result of flooding. The Burlington Bridge reopened July 19, 2008. The Burlington Bridge was one of three bridges in southeast Iowa closed by flooding at some point between June 16 and

July 19. The Burlington Bridge was the first to close and the last to reopen. The Fort Madison Bridge was the last to close and the first to reopen. The third bridge was in Keokuk. The Fort Madison Bridge was the next closed bridge. Had Ms. Bowman traveled to work by means of the Fort Madison Bridge, her journey to work would have increased to 40 miles one way. Neither Ms. Bowman nor the employer viewed the longer journey as a financially viable option for Ms. Bowman, given her wage as a CNA. On June 16, Ms. Bowman signed an agreement with the employer whereby she agreed to return to the employment as soon as the Burlington Bridge reopened and the employer agreed to hold her position until that time. On July 19, Ms. Bowman notified the employer that the Burlington Bridge was scheduled to reopen that day. The employer's told Ms. Bowman that the employer had already made out the schedule and would have no work for Ms. Bowman until Monday, July 28, 2008. Ms. Bowman reported for work on July 28 and has continued in the employment.

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".

The greater weight of the evidence indicates that Ms. Bowman would have continued to report for work during the period of June 22 through July 19 2008, but for the flood-related closing of the Burlington Bridge. Ms. Bowman has maintained her work availability with regard to her usual 20-mile round-trip commute, but was not required by Iowa Code section 96.4(3) to maintain availability for work involving a commute four times her usual commuting distance. The administrative law judge concludes that Ms. Bowman is eligible for benefits for the period of June 22 through July 19, 2008. Because the employer continued to have the same work available for Ms. Bowman during the period of June 22 through July 19, 2008, the employer's account will not be charged for benefits paid to Ms. Bowman for that period. See Iowa Code section 96.7(2)(a)(2).

The evidence indicates that the employer did not have work available for Ms. Bowman for the week of July 20-26, 2008. The evidence indicates that the lack of work was no longer attributable to the bridge closing. The greater weight of the evidence indicates that Ms. Bowman was temporarily unemployed during the week that ended July 26, 2008, pursuant to a temporary layoff. Ms. Bowman is eligible for benefits for the week ending July 26, 2008. The employer's account may be charged for benefits paid for the week ending July 26, 2008.

DECISION:

The Agency representative's July 25, 2008, reference 01 is reversed. The claimant satisfied the work availability requirements during the period of June 22 through July 26, 2008 and is eligible for benefits for that period. The employer's account will not be charged for benefits paid for the

period of June 22 through July 19, 2008. The employer's account may be charged for benefits paid for the week ended July 26, 2008, when the claimant was temporarily laid off.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css