

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELLEN MEIER
Claimant

APPEAL NO: 07A-UI-08888-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HEALTH SERVICES – IOWA CORP
Employer

OC: 08/12/07 R: 02
Claimant: Appellant (1)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Ellen Meier (claimant) appealed an unemployment insurance decision dated September 19, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was not available to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2007. The claimant participated in the hearing. The claimant participated in the hearing with Jan Eisenmenger, former supervisor. The employer participated through Aimee Kern, Employee Relations Coordinator and Jodie Anderson, Service Supervisor. Based on the evidence, the arguments of the parties, 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 part-time in May 1988 but became a full-time certified home health aide on August 7, 1990. She was taken off work by her treating physician on June 20, 2007 due to a non-work-related medical leave. Prior to taking medical leave, the claimant worked full-time during the day. She was placed on leave under the Family Medical Leave Act through July 11, 2007. She had not yet been released to return to work at that time so the employer granted another medical leave. The claimant was released to return to work without restrictions on August 13, 2007. Her position was still available but the claimant had to apply for it, which she did. However, she advised the employer she could not work the scheduled hours for this position, which were the same hours she worked before going on medical leave. The claimant was going to school and previously her classes had been at night so the employer was able to accommodate her school schedule. She now goes to school on Mondays and Wednesdays mornings and needs at least three days off during the week in order to complete a school requirement. She claims she is available to work full time hours but only if she could work nights and weekends. The claimant was not available to work her previous

schedule and the employer has no available hours at night or on the weekends. The claimant did apply for an on-call position on September 3, 2007 and is currently working in that capacity.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22.

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".

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She previously worked during the day but now needs time off during the day to attend school. The employer testified that its work involves daytime hours. The claimant had a former supervisor testify that there was evening and weekend work but that supervisor has not worked for the employer since 2006 and is not able to testify as to the current needs of the employer. Since the claimant is limiting her availability, benefits are denied.

DECISION:

The unemployment insurance decision dated September 19, 2007, reference 01, is affirmed. The claimant does not meet the availability requirements of the law and is not entitled to unemployment insurance benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs