

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

BETHANY D GATES

Claimant,

and

HEARTLAND HOME CARE INC

Employer.

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HEARING NUMBER: 11B-UI-02603

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Bethany D. Gates, worked for Heartland Home Care, Inc. beginning May 21, 2010 as a part-time LPN. (Tr. 2, 3) At the start of her employment, the claimant signed an 'Employment Acknowledgment Agreement' which provided that the employer "...does not guarantee requested shifts or does not exempt any employees from working weekends..." (Tr. 4, Exhibit 3) In her position as an LPN, the claimant also signed in acknowledgement and agreement of the employer's policy regarding case assignments, which were at the employer's discretion. (Tr. 4, 5, Exhibit 3-unnumbered p.2) During the summer, the claimant worked "...forty plus hours most of the summer." (Tr. 6)

The claimant became a full-time student beginning in August of 2010. (Tr. 2, 3) She was in school from Monday through Fridays from 8:00 a.m. until 3:00 p.m. (Tr. 7) She was also a cheerleader for William Penn, which required practice for an upcoming competition in the fall. (Tr. 7)

On January 4th, the employer contacted Ms. Gates with an offer of work in Bloomfield, as the Moravia client that she previously worked with no longer had insurance and the employer no longer provided that client with nursing care. (Tr. 5, 6, Exhibit 2) The hours involved were from 10:00 a.m. until 10:00 p.m., seven days a week. (Tr. Exhibit 2) The claimant declined because she believed "...it was too far to drive." (Tr. 5, 6) However, the distance to the new client was not so dissimilar from the distance she'd already driven for six months to the old client. (Exhibit 4-unnumbered pp. 1 & 4) The employer offered her another client in town, and in Albia, which Ms. Gates declined because of her school schedule. (Tr. 6-7)

The last time the claimant actually worked for the employer was December 31st (Tr. 2, 3) prior to filing her claim for unemployment benefits on or about January 9, 2011. (Tr. 2-3)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) (2009) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

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 requirement 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 the benefits under section 96.5, subsection 1, paragraph "h".

The record clearly establishes that Ms. Gates unduly restricted her availability when she refused work because of her being a full-time student and her cheerleading schedule. The employer could not accommodate her new schedule (unavailable during weekdays and some weekends), and should not be expected to. According to the claimant's own testimony, she worked a near full-time schedule during the summer months. Granted, she may not reasonably be expected to work a full-time schedule permanently, but to go from 40 hours availability to none takes her out of the realm of availability for regular part-time hours. Ms. Gates violated her employment agreement which included availability for weekend and she was aware that the position required travel on occasion. She clearly refused suitable work when she declined assignments that would work within her school schedule. (Exhibit 2) For these reasons, we conclude that the claimant has failed to satisfy her burden of proving she is able and available for work.

DECISION:

The administrative law judge's decision dated March 25, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not able and available for work. Accordingly, she is not

allowed benefits until such time she can show she is "...is able to work, available for work, and earnestly and actively seeking work..." See, 871 IAC 24.22. Lastly, this matter is remanded to the Iowa Workforce Development Center, Claims Section, for a consideration of the whether the claimant refused suitable work.

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

AMG/lms