

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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MOLINE IL 61265

NEW CHOICES INC  
NCI  
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Appeal Number: 04A-UI-02386-H2  
OC 01-25-04 R 04  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 24, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held in Davenport, Iowa on June 11, 2004. The claimant did participate and was represented by Sharon Sinnard, Attorney at Law. The employer did participate through Debra Dickinson, Human Resources Coordinator; JoAnn Ames, Direct Care Worker; Dana Beneker, Treatment Coordinator; Julie Newell, Treatment Coordinator; and Ron Mendoza, Direct Care Staff Member. Employer's Exhibit One was received. Claimant's Exhibit A was received.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a direct care associate part time through date of hearing. The claimant began his employment with NCI on December 18, 2001 as a direct care associate and weekend team lead. The claimant was later promoted to a full time supervisor in approximately September 2002. On January 22, 2004 the claimant was demoted to a direct care associate because the employer believed the claimant had falsified his time sheets and some of his activities. As a direct result of that decision, the claimant's hours of work have been substantially reduced from full time. The employer chose to demote the claimant, not to discharge him. Since the January 2004 demotion the claimant has worked on average only about seven hours per week.

The claimant is currently being offered work on an as-needed basis. The claimant currently has no guarantee of any amount of hours per week.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

Iowa Code Section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The claimant's hours have been cut from an average of 40 hours per week to seven hours per week. The claimant is working all hours that have been offered to him. Since the claimant is now being offered less hours than full-time hours, he is partially unemployed and is entitled to benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The February 24, 2004, reference 01, decision is affirmed. The claimant is able to work and available for work effective February 24, 2004. Benefits are allowed, provided the claimant is otherwise available.

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