

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA M SCOTT**

Claimant

**APPEAL NO: 12A-UI-09768-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST POINT CARE CENTER INC**

Employer

**OC: 07/15/12**

**Claimant: Appellant (2/R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 9, 2012 determination (reference 01) that held her ineligible to receive benefits as of July 15, 2012, because her of pregnancy. The claimant participated in the hearing. The employer responded to the hearing and was called, but the phone number the employer provided constantly rang busy. The administrative law judge was unable to contact the employer for the 9:30 hearing.

The employer called the Appeals Section at 10:45 a.m. to participate in the 9:30 a.m. scheduled hearing. The administrative law judge was involved in another hearing and unable to talk to the employer. The employer verified the phone number so the administrative law judge could call the employer later. Later, the employer's number was called numerous times on September 5 and 6. Every time the employer's phone number was called, it rang busy and the administrative law judge could not contact the employer. The administrative law judge did not receive any message that the employer called a second time or after the first 10:45 a.m. September 5 call.

Based on the evidence, the claimant's arguments of the parties, and the law, the administrative law judge finds the claimant eligible to receive benefits as of July 15, 2012.

**ISSUE:**

As of July 15, 2012, is the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant still considers herself an employee who the employer has not scheduled to work for several months. She worked for the employer as a certified nursing assistant on the night shift. She worked with another CNA and a registered nurse. Her job, lifting residents, required her to lift more than 25 pounds.

After the claimant learned she was pregnant, her physician told her she could work but she could not lift more than 25 pounds. The employer sent the claimant home with the work restrictions she had because she was unable to continue the work or shift she had been working. The employer could not accommodate her work restrictions.

The claimant understood the employer would try to find her another job, but this did not occur. The claimant established a claim for benefits during the week of July 15, 2012. Even though the claimant was not required to look for work, she has been looking for work. She is looking for kitchen or laundry work and would also work as a cashier at a grocery store or as a bank teller.

#### **REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). The law presumes a claimant is not eligible to receive benefits when her availability is unduly limited because she is willing to work only in a specific area although suitable work is available in other areas. 871 IAC 24.23(18).

The facts establish that even though the claimant is unable to work as a CNA because of her 25-pound weight restriction, she is capable of working in other jobs and is not limiting the type of work she is willing to do. To be eligible to receive benefits, a claimant does not have to be able and available to work at the job she had been working. If the claimant does not limit her availability to work in other areas and is not looking for a tailor-made job, she may be able to and available for work. The claimant established that she is eligible to receive benefits as of July 15, 2012.

Since the claimant has not been working for more than a month, this matter will be remanded to the Claims Section to determine if the claimant is required to actively look for work each week she files a claim for benefits.

#### **DECISION:**

The representative's August 9, 2012 determination (reference 01) is reversed. As of July 15, 2012, the claimant is able to and available for work and is eligible to receive benefits. The issue of whether the claimant is required to make an active work search each week she files a claim for benefits is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs