

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANGELA M GOODMAN**  
Claimant

**NEWTON HEALTH CARE CENTER LLC**  
Employer

**APPEAL 19A-UI-02208-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/16/18  
Claimant: Respondent (4R)**

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Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 4, 2019, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2019. Claimant did not participate. Employer participated through Office Manager Kim Bates.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 19, 2017. Claimant worked as a full-time housekeeper until March 26, 2019, when she was moved into a Certified Nursing Assistant position. Beginning December 16, 2018, the employer made a business decision to temporarily reduce claimant's hours from 37.5 hours per week to between 22 and 25 hours per week. Claimant was returned to her regular full-time hours on February 24, 2019. The employer's decision to reduce claimant's hours was the sole reason she was not working her full-time hours during this time frame.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work beginning December 16, 2018 and ending February 23, 2019. Claimant was not able to and available for work effective February 24, 2019.

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 Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced

workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant's hours were reduced, due to no fault of her own, from December 16, 2018 through February 23, 2019. The employer agrees the only reason claimant was not working her regular, full-time hours was because those hours were not available and not due to any issues with her ability to or availability for work. Claimant was therefore able to and available for work during this time frame. Claimant is unavailable for work effective February 24, 2019, as she returned to her regular full-time hours beginning that week and is therefore working to a degree that removes her from the labor market. Benefits are therefore allowed for the ten-week period ending February 23, 2019, but withheld beginning February 24, 2019.

**DECISION:**

The March 4, 2019, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant was able to work and available for work beginning December 16, 2018 and ending February 23, 2019. Benefits are allowed, provided claimant is otherwise eligible, during this time period. Claimant is not able to and available for work effective February 24, 2019, as she returned to regular, full-time employment. Benefits are withheld effective February 24, 2019.

**REMAND:**

The issues of whether claimant was employed with the employer at the same hours and wages as agreed to and whether the employer is subject to charge are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs