

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTY GARDNER
Claimant

APPEAL NO: 12A-UI-13489-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DELAWARE CO MEMORIAL HOSPITAL
REGIONAL MEDICAL CENTER**
Employer

OC: 10/14/12
Claimant: Appellant (1/R)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Christy Gardner (claimant) appealed an unemployment insurance decision dated November 6, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was limiting her availability with Delaware County Memorial Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 11, 2012. The claimant participated in the hearing. The employer participated through Joan Funke, Human Resources Director; Debbie Loecke, Payroll Benefits Manager; Rose Downs, Inpatient Manager; and Pat Doyle, Chief Nursing Officer. 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 employed as a full-time registered nurse working on the medical surgical floor from September 22, 2009 through December 1, 2012 when she voluntarily resigned. She quit for another job but testified that she had to put off starting the job until January 2013 because she had to move her family to Des Moines. The final separation issues have not yet been litigated and will be remanded for an initial determination.

The claimant worked the night shift until she went on leave under the Family Medical Leave Act (FMLA) on April 5, 2012 for pre-term labor. Her FMLA was exhausted on June 3, 2012 and her leave was extended through July 31, 2012. The claimant was placed on prn status when she was unable to return to work. She delivered her son on July 30, 2012.

The claimant was released without restrictions on September 10, 2012. She provided the release to the employer but stated that she needed some additional time due to "baby blues." The schedule had already been made out through the beginning of October 2012 so the

employer scheduled her for orientation on October 11, 2012. The claimant worked on October 13, 14, 16, 21, 26, 27 and 28. She was on call on October 20, 2012. The employer needed her to work on October 29 and 30 but she was not available. The claimant was scheduled to work on November 3 and 4 but she was absent due to illness. She was needed to work on November 5 and 8 but was not available. The claimant was on call on November 16, 24 and 25. She was scheduled to work on November 28 and 29 but called in due to illness and she was on call on November 30, 2012 but was told she was not needed. The claimant could have picked up more hours but was no longer willing or able to work the night shift due to the birth of her child.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. It is the claimant's burden to prove her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

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.

871 IAC 24.23(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.

The claimant previously worked the night shift but limited her availability after the birth of her son. Due to the hours she worked, the hours she missed due to illness, and the hours she declined to work, she does not meet the availability requirements of the law. Benefits are denied as of October 14, 2012.

The case will be remanded for an initial fact-finding determination. 871 IAC 26.14(5).

<http://www.iowaworkforce.org/ui/appeals/index.html>

DECISION:

The unemployment insurance decision dated November 6, 2012, reference 01, is affirmed. The claimant does not meet the availability requirements of the law and benefits are denied. The case is remanded for a review and determination on the final separation issues.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/bjc