

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA A SCOTT
Claimant

APPEAL NO. 10A-UI-12461-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRIENDSHIP HAVEN INC
Employer

OC: 07-18-10
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 31, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 26, 2010. The claimant did participate. The employer did participate through Amy Porter, Director of Human Resources.

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: The claimant was employed as a certified nursing assistant, part-time, beginning November 13, 2007, through August 23, 2010, when she was discharged. The claimant was not guaranteed any particular shift or number of hours when she was hired. Part-time employees receive no guarantee of hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from July 18, 2010 until August 23, 2010.

Iowa Code § 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(26) provides:

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

(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.

The claimant was not guaranteed any particular number of hours and was working what she normally did during that period. Accordingly, benefits are denied.

DECISION:

The August 31, 2010, reference 01, decision is affirmed. The claimant is not able to work and available for work effective July 18, 2010 through August 23, 2010. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw