

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NORMA J BONEFAS**

Claimant

**APPEAL NO. 10A-UI-09968-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARTIG DRUG COMPANY**

Employer

**OC: 04/04/10**

**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Norma Bonefas, filed an appeal from a decision dated July 8, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 31, 2010. The claimant participated on her own behalf. The employer, Hartig Drug Company (Hartig), participated by Director of Human Resources Mary Jo Zalaznik.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Norma Bonefas was employed by Hartig beginning December 31, 2002 as a full-time pharmacy tech. In November 2009 Director of Pharmacy Dave Scofield talked to the claimant about the new Iowa law which would go into effect July 1, 2010. Beginning on that date all pharmacy techs would have to be certified. He asked Ms. Bonefas if she intended to get her certification and she said she did not. He then asked her when she wanted to leave and she said, "I guess June 30."

From that point on the employer began advertising for a new pharmacy tech, with signs posted on the front window of the store and in the pharmacy area. A new person was hired January 7, 2010, to "get her up to speed" before July 1, 2010, and while another employee was on maternity leave until March 2010. During this time the claimant decided to try to get her certification but did not tell the employer in case she was unable to pass the test. On March 10, 2010, she informed Pharmacist Jean Adams she had passed the test and was now certified, but by that time her replacement had already been hired and trained and the employee on maternity leave was just returning.

Ms. Bonefas was under the impression she had to put her resignation in writing two weeks before her intended ending date before it was "official" and did not consider her verbal exchange with Mr. Scofield to be a binding quit. She later learned this was not the case. The employer elected to allow her to rescind her resignation but the only job available at that point was

part-time. The claimant agreed to remain in that capacity and then filed a claim for unemployment benefits effective April 4, 2010, asserting she was working on a reduced work-week basis.

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

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(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.

Contrary to the claimant's belief, she did not have to give a written resignation for it to be "official." She verbally told Mr. Scofield in November 2009 she would be leaving June 30, 2010, because she did not intend to become certified and knew she could not remain employed as of July 1, 2010. The employer accepted the resignation. She did nothing after that to notify the employer she had changed her mind and would try to get her certification. On that basis the employer hired and trained her replacement.

After passing the test she notified her supervisor but by that time her regular full-time job had already been filled. She was allowed to rescind her resignation and was offered a part-time job, which she accepted. This constitutes a new contract of hire as a part-time employee. Ms. Bonefas remains in that capacity as of the current date. Under the provisions of the above Administrative Code section, she is not able and available for work as she is working in the same capacity as she was hired. She is not able and available for work.

**DECISION:**

The representative's decision of July 8, 2010, reference 01, is affirmed. Norma Bonefas is not eligible for unemployment benefits as she is not able and available for work. Benefits are denied.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs