

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
DONNA S ELSCOTT Claimant NEWTON COMMUNITY SCHOOL DISTRICT Employer	APPEAL NO: 08A-UI-01771-S2T ADMINISTRATIVE LAW JUDGE DECISION OC: 01/13/08 R: 02 Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Donna Elscott (claimant) appealed a representative's February 12, 2008 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work with Newton Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 10, 2008. The claimant participated personally. The employer participated by Jim Sogard, Human Resources Director; Jackie Black, Director of Business Affairs; Terri Pearson, Principal,; and Sara Shockey, Teacher. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was able and available for 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 hired on August 26, 2004, and at the end of her employment was working as a part-time para-professional in an early childhood special education classroom. She was assigned to work solely with one three-year-old child.

The claimant had been transferred into the classroom for the 2007-2008 school year. She wanted to be working in the kindergarten room where she worked before. The claimant asked for a transfer but the employer denied her request.

On November 5, 2007, the teacher instructed the claimant to help the child get up. The child was lying quietly on the floor. As the teacher watched, the claimant lifted the child's hands and said the child hurt her. The teacher sent the claimant to the principal's office. The claimant said she had a work-related injury from an out-of-control child who was fighting her. The employer sent the claimant to a physician's assistant. The claimant was released with restrictions on November 6, 2007. The claimant states this same child injured her right shoulder again on November 16, 2007, her left shoulder on November 26 and 28, 2007. The claimant would tell

the teacher each time that she was hurting and the teacher would send the claimant to the principal's office. The claimant did not tell the teacher that each time was a new injury. The claimant engaged in physical therapy until she was seen on November 28, 2007, by the physician.

On November 28, 2007, the physician examined her and found nothing wrong with her. He released her to return to work without restrictions. She returned and worked on December 4 and 11, 2007. She complained that she was experiencing pain and could work no other days. On December 27, 2007, a second physician stated of the claimant, "When distracted, the patient had no apparent pain with range of motion of the wrist, elbow, or shoulder bilaterally. She had marked symptom magnification and I see nothing for which further intervention would predictably change her self-reported symptoms. In my opinion, there is no reason to attribute her nonspecific symptoms to her employment." Again on January 4, 2008, the claimant sought treatment and the doctor stated "Her findings are nonspecific and she has significant inconsistency on examination and significant symptom magnification on examination. I see nothing for which further intervention is warranted". She was given a work release for full work duty without restriction. The employer received copies of all doctor releases.

On January 3, 4, 7 and 8, 2008, the claimant did not appear for work or notify the principal of her absence. She did contact Sub Finders so that a substitute could be arranged. The handbook indicates that the employee must call the principal after 6:30 a.m. to report an absence. The claimant thought the handbook said she could not contact the principal after 6:30 a.m. She tried to call the principal's private cellular phone and at the principal's home on Sunday but was not able to make contact.

The employer terminated the claimant on January 9, 2008, for excessive absences and improper reporting of the absences. The claimant filed for unemployment insurance benefits with an effective date of January 13, 2008. She does not feel she is able to work even though she has no restrictions from any physician.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able to work.

871 IAC 24.23(1) provides:

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

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant by her own diagnosis is not medically able to work. She is considered to be unavailable for work due to her condition. The claimant is disqualified from receiving unemployment insurance benefits due to her unavailability for work.

DECISION:

The representative's February 12, 2008 decision (reference 02) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs