

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER L ZAIN
Claimant

THE IOWA CLINIC PC
Employer

**APPEAL 19A-UI-06677-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/21/19
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the August 12, 2019 (reference 03) unemployment insurance decision that found claimant was not able to and available for work from July 21, 2019 through August 3, 2019. The parties were properly notified of the hearing. A telephone hearing was held on September 17, 2019, at 2:05 p.m. Claimant participated. Employer participated through Julie Clark, Senior Human Resources Consultant. No exhibits were admitted.

ISSUE:

Whether claimant was able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked as an on-call phlebotomist from May 29, 2018 until claimant voluntarily quit her employment with The Iowa Clinic, PC on August 5, 2019. Claimant filed her original claim on July 21, 2019. Claimant was hospitalized from Sunday, July 28, 2019 until Monday, July 29, 2019 and on bed rest from her release until Wednesday, July 31, 2019. The unemployment insurance decision determined claimant was not eligible for benefits from July 21, 2019 through August 3, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work from July 21, 2019 through August 3, 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), (2)i(3) provides:

Benefit 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. . . .

(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.

i. *On-call workers.*

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as needed, and the wage history consists of only on-call wages, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Any decrease in hours is directly related to the on-call status when work is not available. Claimant was not able and available from July 21, 2019 through August 3, 2019, because she was an on-call employee. Furthermore, claimant was not able and available from July 28, 2019 through July 31, 2019 due to illness. Accordingly, claimant is not eligible for benefits from July 21, 2019 through August 3, 2019.

DECISION:

The August 12, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant was not able to and available for work from July 21, 2019 through August 3, 2019 and, therefore, is not eligible for benefits for that period of time.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/rvs