

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KOMI B MUHARE
Claimant

APPEAL NO. 06A-UI-10965-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES
Employer

OC: 09/24/06 R: 03
Claimant: Respondent (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Heartland Employment Services filed an appeal from a representative's decision dated October 31, 2006, reference 02, which held that Komi Muhare satisfied the availability requirements of the law effective September 24, 2006. After due notice was issued, a hearing was held by telephone on November 30, 2006. Ms. Muhare participated personally. The employer participated by Ted Biderman, Human Resources. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Muhare is able to and available for work within the meaning of the law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Muhare began working for Heartland Employment Services on July 28, 2005 as a full-time certified nursing assistant (CNA). Because of back pain and scoliosis, Ms. Muhare's doctor limited her work activities. She was only to perform what was considered medium work. Based on the doctor's recommendations, Ms. Muhare was placed on light duty effective September 14, 2006.

Ms. Muhare's light duty consisted of serving meals to residents. She was to come in at 7:00 a.m., 11:30 a.m. and 5:30 p.m. and remain until meals were completed. Ms. Muhare was advised that her hours would be cut if the facility's census went down. She only missed one morning shift after being placed on light duty. She is not currently working, due to low census.

REASONING AND CONCLUSIONS OF LAW:

Ms. Muhare is still employed by Heartland Employment Services but is not working at this time, due to low census. She cannot perform her usual job of CNA, because of medical restrictions. It was the employer's choice to have her return on light duty rather than waiting until she had a full release from her doctor to work as a CNA. Ms. Muhare remains available to work the same

light duty shifts she had been working prior to the census declining. She retains the mental and physical ability to perform some work activity that is engaged in by others as a means of livelihood.

The administrative law judge concludes from all of the evidence that Ms. Muhare satisfies the availability requirements of Iowa Code section 96.4(3). Accordingly, benefits are allowed.

DECISION:

The representative's decision dated October 31, 2006, reference 02, is hereby affirmed. Ms. Muhare is available for work within the meaning of the law. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw