

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CAROL A BOCKENSTEDT
2557 ROSEWOOD DR
DUBUQUE IA 52001

DUBUQUE VISITING NURSE ASSN
350 N GRANDVIEW AVE
DUBUQUE IA 52001

Appeal Number: 05A-UI-08945-DT
OC: 07/10/05 R: 04
Claimant: Appellant (1/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Carol A. Bockenstedt (claimant) appealed a representative's August 24, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Dubuque Visiting Nurse Association (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2005. This appeal was consolidated for hearing with one related appeal, 05A-UI-08946-DT. The claimant participated in the hearing. Shelley Stickfort appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on January 2, 2001. She worked full time (64 hours for two weeks) as a homemaker/choreworker in the employer's homecare service through May 19, 2005. She went on a medical leave of absence as of May 20, 2005 for a foot surgery. She did not make a claim to the employer that the foot condition was a work-related condition.

Her doctor ordered her off work after the surgery; she saw her doctor again on July 8, 2005, and she was given a partial release to return to work as of July 11, 2005, but with a four-hour per day (20 hours per week) work limit. She brought the partial release to the employer on July 8; however, no hours were made available for her the week ending July 16, 2005. For the following several weeks, she was given perhaps 14 hours per week. She filed a claim for unemployment insurance benefits effective the week ending July 10, 2005.

She was not scheduled to see her doctor again until August 4, 2005. She did see her doctor that day and was given a full release. However, there was also a separation from employment on that date, apparently for issues unrelated to the claimant's leave of absence and partial release. As of the date of the hearing, the employer had filed a protest regarding the merits of the separation, but as yet there had not been a fact-finding interview or preliminary decision on the separation (pending under reference 02).

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Where a work restriction is due to a health condition that has not been shown by medical evidence to be work-related, the employer is not required to provide the claimant with work within the restrictions, but rather can decline to return the claimant to any work until there has been a full recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The claimant has not been released to return to full work duties. She was not able and available for her full duties until August 4, 2005; the claimant is not eligible to receive unemployment insurance benefits until August 4, 2005, and the employer's failure to provide her with part time work prior to that date is of no consequence.

An issue as to the separation from employment arose during the hearing. This issue was not included in the notice of hearing for this case; the case will be remanded to verify that an investigation and preliminary determination has occurred on that issue under reference 02.871 IAC 26.14(5).

DECISION:

The representative's August 24, 2005 decision (reference 01) is affirmed. The claimant was not fully able to work and available for work until August 4, 2005. She is not qualified to receive unemployment insurance benefits until after that date, if she is then otherwise eligible. The matter is remanded to the Claims Section for a review of the investigation and determination of the separation issue.

ld/kjw