

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

SUZANNE LANG
5941 VISTA DR APT 420
WEST DES MOINES IA 50266

PRESBYTERIAN HOMES & SERVICES
CARE CENTER INC
2845 HAMLINE AVE N APT 200
ROSEVILLE MN 55113

Appeal Number: 05A-UI-06882-BT
OC: 05/15/05 R: 02
Claimant: Respondent (2)

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 for Work
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Presbyterian Homes & Services Care Centers, Inc. (employer) appealed an unemployment insurance decision dated June 21, 2005, reference 02, which held that Suzanne Lang (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2005. The claimant participated in the hearing. The employer participated through Rebecca Campbell, Human Resources Director.

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 as a full-time Certified Nurse's Assistant on January 31, 2005. She was hired at 80 hours per pay period with a minimum of 60 hours per pay period. The employer advised the claimant that if she failed to maintain the minimum standard of hours for three pay periods, she would lose her full-time status. During the first seven pay periods, the claimant never met or exceeded the 80 full-time hours. On March 31, 2005 and April 14, 2005, her supervisor issued written disciplinary warnings for poor attendance. On April 22, 2005, a memo was attached to her paycheck which advised her that she had failed to work even the minimum number of hours and her full-time status was in jeopardy. On May 6, 2005, a second memo was attached to her paycheck, which advised her of the same information as before, but this was the second time she was below the required minimum number of hours. The employer met with the claimant on May 11, 2005 since the claimant was again not going to meet the required minimum number of hours for the upcoming pay period ending May 20, 2005. The employer advised the claimant she had effectively lost her full-time status. She had been off work due to a non-work related medical condition and could not return to work since she was on work restrictions. She was not eligible for a personal leave or time off under the Family Medical Leave of Absence. Since the claimant was unable to advise the employer when she would be available to work, the employer could not place her in a part-time status and instead placed her on an on-call status. The claimant signed new employment documents representing her status as an on-call employee with no guarantee of hours.

The claimant filed a claim for unemployment insurance benefits effective May 15, 2005 and has received benefits after the separation from employment in the amount of \$1,141.00.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant meets the availability requirements so that she qualifies for unemployment insurance benefits and for the following reasons, the Administrative Law Judge concludes she does not.

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 24.22(1)a provides:

Benefits 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The claimant was hired to work full-time based on an 80-hour, bi-weekly pay period with a minimum requirement of 60 hours. Her full-time status was conditional upon at least reaching the minimum required hours. The claimant never reached 80 hours for a pay period and after falling below 60 hours for three pay periods, she lost her full-time status and agreed to work as an on-call employee. At that time, she could not even work part-time due to a non-work-related medical condition. The claimant has limited her own hours and therefore does not meet the availability requirements of the law. Benefits are therefore denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated June 21, 2005, reference 02, is reversed. The claimant is not available for work and benefits are denied as of May 21, 2005.

sdb/kjw