

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY L BURKE

Claimant

APPEAL NO. 07A-UI-05884-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAYLAND MENNONITE HOME ASSN

PARKVIEW HOME

Employer

**OC: 07-16-06 R: 03
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 1, 2007, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on July 11, 2007. The claimant did participate. The employer did participate through Bill Grimm, Administrator, Vickie Bender, Director of Nursing, and Debra West, Assistant Director of Nursing.

ISSUE:

Was the claimant able to and available for work, including whether the claimant was willing to work during hours in which suitable work was available for her?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a CNA full time beginning July 31, 2006 through June 3, 2007, when she voluntarily quit to take another job. This case does not deal with the claimant's separation, but rather with the month prior to the claimant's separation and whether the claimant was generally able to and available for work during the month of May 2007.

During May of 2007, the claimant applied for and received some unemployment insurance benefits because she alleged her hours had been cut and she was not working her normal full-time hours. The combined testimony of the employer's witnesses indicates that there were hours available for the claimant so that she need not have suffered a decrease in her hours, but that the claimant was not willing to work the hours when work was available to her. The claimant was hired to work third shift, but changed to days so that she could spend more time with her daughter. Similarly, the claimant was removed from weekends due to her request to the scheduler, not because of the scheduler's lack of work for her. The employer had to hire outside help from a temporary agency to cover the required shifts, illustrating that hours were in fact available. Additionally, the employer has established that it was more cost effective for them to use a current employee to fill shifts than to hire a temporary worker, illustrating that the claimant would have been given additional shifts had she only asked for them. The claimant's

hours were cut because she changed her schedule and would no longer work the hours for which she was hired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work during the month of May 2007.

Iowa Code § 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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant asked beginning in May to be moved off her third shift hours and would not work all hours that were available for her. The claimant's hours were reduced because of her refusal to work the shifts that were available that she had worked previously. The employer did not reduce the claimant's hours except upon the claimant's own request. Accordingly, benefits are denied as the claimant did not make herself available for work during the hours in which suitable work was available for her.

DECISION:

The June 1, 2007, reference 04, decision is affirmed. The claimant is not able to work and available for work effective May, 2007. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css