

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

PAMELA J O'BRIEN  
728 LINDEN LANE  
STORM LAKE IA 50588

METHODIST MANOR  
4<sup>TH</sup> AT LARCHWOOD  
STORM LAKE IA 50588

Appeal Number: 04-UI-06374-DWT  
OC: 05/02/04 R: 01  
Claimant: Appellant (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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Pamela J. O'Brien (claimant) appealed a representative's June 1, 2004 decision (reference 01) that concluded she is not eligible to receive unemployment insurance benefits, and the account of Methodist Manor (employer) would not be charged because she restricted the number of hours she would work. Initially, a hearing was held on July 7, 2004. The employer did not participate in this hearing. After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer's request to reopen the hearing was granted.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on July 20, 2004. The claimant again participated in the hearing. Connie Jensen, the director of human resources, 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:

Is the claimant able to and available for work as of May 2, 2004?

FINDINGS OF FACT:

The claimant started working for the employer on July 5, 2000. The employer hired the claimant to work as a full-time certified nurse aide. As a result of complications with the claimant's pregnancy, she was on a leave of absence from late August to late September 2003. In late September 2003, the claimant's physician restricted her to light-duty work. The employer did not have any light-duty work for the claimant. In an attempt to remain an employee, the claimant changed her status from a full-time employee to an on-call employee. The claimant was not eligible for any more leave in late September. The employer told the claimant that after her baby was born, the claimant needed to contact the employer about returning to work full time.

The claimant's child was born on March 30, 2004. The claimant contacted the employer after her doctor released her to return to work in late April or early May 2004. The claimant told the employer she was able to again work full-time as a certified nurse aide and did not have any work restrictions. As of late April or early May, the employer did not have any work available for the claimant. As of the date of the hearing, the employer still considers the claimant an employee, but has not called or asked her to do any work.

REASONING AND CONCLUSIONS OF LAW:

Prior to May 2, 2004, when the claimant established a claim for unemployment insurance benefits, she was not available to work full-time because of her doctor's work restrictions. As of May 2, 2004, the claimant does not have any work restrictions and contacted the employer to return to full-time work. The claimant demonstrated that she is able to and available for work as of May 2, 2004. Iowa Code §96.4-3.

Late August 2003 was the last time the claimant actually performed any work for the employer because she was restricted from working and was released for only light-duty work. The employer did not have any light-duty work for the claimant to do.

The facts in this case follow the factors that pertain to Iowa Code §96.5-1-d. This law states that when a physician advises an individual to stop working because of pregnancy, the employer knows about the necessity of the absence and that after being released to work the individual offers to return to her regular work, but if the employer does not have any work or comparable work available, the individual is eligible to receive unemployment insurance benefits. As of May 2, 2004, the claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 1, 2004 decision (reference 01) is reversed. As of May 2, 2004, the claimant is able to and available for work without any restrictions. The claimant has not worked since May 2, 2004, because the employer does not have any work for her to do. As of May 2, 2004, the claimant is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

dlw/kjf