

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLENE ALLAIRE
Claimant

APPEAL NO: 14A-UI-02442-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 01/19/14
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 24, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 26, 2014. The claimant participated in the hearing with Attorney Matt Reilly. Mary Eggenburg, Benefits Specialist and Matt Genslinger, Human Resources Assistant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time nursing assistant for the University of Iowa from September 24, 2012 through March 24, 2014. She experienced an exasperation of a life-long back problem in October 23, 2013, and could not lift or move patients due to her restrictions. The employer asked her to take Family and Medical Leave and she exhausted those benefits December 31, 2013. The employer told the claimant she could take disability or her contract would be terminated April 6, 2014. The claimant began looking for other work in early January 2014 as it was apparent she could not return to her previous positions given her pushing, pulling, lifting, etc. restrictions. The claimant accepted another position with a different employer effective March 24, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

While the claimant could not perform her previous job as a nursing assistant, she was and is able to perform other work, which meets the requirement for able and available for work as the claimant only has to be able to perform some type of work, not necessarily the same type of work she performed previously. She began seeking other employment either prior to or when she filed for unemployment insurance benefits with an effective date of January 19, 2014. Accordingly, benefits are allowed.

DECISION:

The February 24, 2014, reference 01, decision is reversed. The claimant is able to work and available for work effective January 19, 2014. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs