

**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 E HEETLAND  
15274 S AVE  
ACKLEY IA 50601**

**ELLSWORTH MUNICIPAL HOSPITAL  
ATTN ADMINISTRATOR  
110 ROCKSLYLVANIA AVE  
IOWA FALLS IA 50126**

**DEBRA HULETT  
STE 1600  
700 WALNUT ST  
DES MOINES IA 50309-3899**

**Appeal Number: 05A-UI-06962-HT  
OC: 05/29/05 R: 02  
Claimant: Appellant (1)**

**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 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:

The claimant, Carol Heetland, filed an appeal from a decision dated June 29, 2005, reference 01. The decision found her ineligible from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 25, 2005. The claimant did not participate personally but submitted a written statement which was admitted into the record as Exhibit A and offered testimony from witness Marlys Jaff. The employer, Ellsworth Municipal Hospital (Ellsworth), participated by Human Resources Manager Cheri Geitz and Clinic Manager Darla Nederhoff. The employer was represented by Attorney Debra Hulett. Exhibit One was admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Carol Heetland began working for Mercy Medical North on April 1, 1988. She was hired as a part-time clinic nurse guaranteed a minimum of 16 hours per week. More hours were available as a substitute either at the request of the clinic manager or another staff nurse seeking to change shifts.

On October 1, 2004, Ellsworth assumed ownership of Mercy and the claimant was hired for the same job at the same hours and wages as she had with Mercy. There were benefits which were no longer going to be provided by Ellsworth, but the claimant agreed to continue working for the new owners.

The facility was short of staff and the new owners began recruiting employees to fill the vacancies both before the effective purchase date and afterward. Ms. Heetland applied for some of the jobs but was not hired. However, once the facility was at full staff, the claimant was returned to her minimum of 16 hours per week, and she filed for unemployment benefits.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. The judge concludes she is 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 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Although the claimant may have been working more than 16 hours per week for some time, that was only because the employer was short-staffed and there were vacant positions whose hours were available. This does not alter the fact she was hired with a guarantee of only 16 hours per week and she is currently working that number of hours now that additional staff has been

hired. Under the provisions of the above Administrative Code section, she is still working the same number of hours as contemplated in her original contract of hire and is not eligible for benefits.

DECISION:

The representative's decision of June 29, 2005, reference 01, is affirmed. Carol Heetland is not eligible for benefits as she is not able and available for work.

bgh/kjw