

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRYL M MOLYNEUX
Claimant

APPEAL NO. 08A-UI-10633-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOME CHOICE LLC
Employer

OC: 10/19/08 R: 03
Claimant: Respondent (2)

Section 96.4(3) – Able and Available.

STATEMENT OF THE CASE:

The employer, Home Choice, filed an appeal from a decision dated November 3, 2008, reference 02. The decision allowed benefits to the claimant, Apryl Molyneux. After due notice was issued, a hearing was held by telephone conference call on December 1, 2008. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Co-Owners Steve Melchoir and Scott Oltmanns.

ISSUE:

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

FINDINGS OF FACT:

Apryl Molyneux was employed by Home Choice beginning September 23, 2008 as a part-time caregiver. She was hired to be part-time without any guarantee of a minimum number of hours per week or per pay period. The number of hours for which she is scheduled depends on the needs of the clientele which range from hospice work to short-term post operative care.

The claimant has missed some scheduled shifts due to calling in sick, for a total of approximately 40 hours since she was hired.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant is working in the same capacity as she was hired. As there is no guarantee of a minimum number of hours per week or per pay period, she is not working on a reduced workweek basis. Under the provisions of the above Administrative Code section, she is therefore not able and available.

DECISION:

The representative's decision of November 3, 2008, reference 02, is reversed. The claimant is not eligible to receive unemployment benefits as she is not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css