

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

SHARON FIEGEL
1702 S 5TH ST
CLINTON IA 52732

MERCY MEDICAL CENTER – CLINTON
C/O HUMAN RESOURCES
1410 N 4TH ST
CLINTON IA 52732

AMENDED
Appeal Number: 04A-UI-05679-AT
OC: 05-09-04 R: 04
Claimant: Respondent (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, 4th 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 – Eligibility for benefits
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Mercy Medical Center filed a timely appeal from an unemployment insurance decision dated May 13, 2004, reference 01, which allowed benefits to Sharon Fiegel. After due notice was issued, a telephone hearing was held June 9, 2004 with Ms. Fiegel participating. Recruitment Coordinator Cindy Petersen participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Sharon Fiegel is an employee of Mercy Medical Center of Clinton. She works as a certified nursing assistant. She had surgery on her left wrist on May 4, 2004. On May 5, 2004 her doctor released her to return to work provided that she could work with one hand.

Ms. Fiegel has a cast on her left hand. The cast prevents her from wearing the surgical gloves required by the employer for infection control.

Ms. Fiegel has worked as a nursing assistant for a number of years and has prior experience working in factories. She has received unemployment insurance benefits since filing a claim effective May 9, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Fiegel is entitled to receive unemployment insurance benefits at this time. The administrative law judge concludes that 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".

The evidence establishes that Ms. Fiegel has been released to return to work one handed and that she has a cast on her left wrist. The cast prevents her from wearing the surgical gloves necessary for infection control. The administrative law judge concludes that Ms. Fiegel is not available for work because the cast prevents her from performing a significant portion of the duties of her occupation and which also completely precludes her from being able to follow the employer's infection control procedures. Because of these restrictions, the administrative law judge concludes that Ms. Fiegel does not meet the eligibility requirements of being able and available for work. Benefits must be withheld.

Ms. Fiegel has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code Section 96.3-7.

DECISION:

The unemployment insurance decision dated May 13, 2004, reference 01, is reversed. Benefits are withheld until the claimant establishes that she is medically able to and available for work. She has been overpaid by \$1,181.00.

tjc/tjc/b