

**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**

**DARRELL D GASTON  
107 ELDENE CT  
EVANSDALE IA 50707-1305**

**TRAER NURSING CARE CENTER  
SUNRISE HILL CARE CENTER  
909 – 6<sup>TH</sup> ST  
TRAER IA 50675**

**Appeal Number: 06A-UI-07620-HT  
OC: 07/02/06 R: 03  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Darrell Gaston, filed an appeal from a decision dated July 26, 2006, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 14, 2006. The claimant participated on his own behalf. The employer, Traer Nursing Care Center (Traer), participated by Administrator Linda Bevins.

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: Darrell Gaston was employed by Traer beginning

September 2005 and his last day of work was June 27, 2006. He is a full-time certified nursing assistant.

Mr. Gaston applied for, and was granted, a leave of absence for a non-work-related medical problem. There was no return to work date established but the director of nursing told him he would be returned to work when his doctor released him without restrictions. That has not yet occurred.

#### REASONING AND CONCLUSIONS OF LAW:

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

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(1), (10) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant is currently on a medical leave of absence for a non-work-related illness. Under the provisions of the above Administrative Code sections, he is not able and available for work and is ineligible for unemployment benefits.

#### DECISION:

The representative's decision of July 26, 2006, reference 02, is affirmed. Darrell Gaston is not able and available for work and is ineligible for unemployment benefits.

bgh/pjs