

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYLE DANIELS

Claimant

APPEAL NO: 10A-UI-16392-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER

Employer

OC: 01-10-10

Claimant: Appellant (2R)

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 22, 2010, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 18, 2011. The claimant participated in the hearing. Diane Grantz, Director of Human Resources, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B were admitted into evidence.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time food production worker for Mercy Medical Center in Clinton July 26, 2010. On October 4, 2010, she provided the employer with a doctor's note excusing her from work for two weeks due to a non-work-related illness. She did not qualify for a leave of absence because she had not been employed with this employer long enough. Additionally, the employer has a no-fault attendance policy so the claimant would have pointed out and lost her job if gone for two weeks. As a result the employer called her during the first week she was off work and notified her that her employment status was being changed to PRN to prevent termination for attendance. The employer followed the call with a letter detailing the change (Claimant's Exhibit A). The claimant effectively thought that meant her employment was terminated and consequently did not submit the doctor's note releasing her to return to work October 19, 2010 (Claimant's Exhibit B). The employer was not sure if she was released to return to work or not and did not schedule her.

The claimant received a letter stating her employment was terminated effective January 2, 2011, as she had not worked for six consecutive pay periods. That issue has not been adjudicated by the Claims Section of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not still employed at the same hours and wages as contemplated in the original contract of hire.

Iowa Code § 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 claimant was hired as a full-time food production worker but was moved to PRN because she had a doctor's note excusing her from work for two weeks and the employer has a no fault attendance policy and was trying not to terminate her employment. While the employer was trying to be helpful the fact remains that the claimant was moved from full-time to as-needed status which substantially affected her hours and wages. While the claimant should have returned her doctor's release to the employer, that is not determinative of the issue because the claimant was moved to PRN status prior to that. Consequently, the administrative law judge concludes the claimant is able and available for work but has not been working the same hours for the same wages. She is eligible for benefits effective the week ending October 23, 2010.

The issue of the claimant's separation from her employment with this employer January 2, 2011, has not yet been adjudicated by the Claims Section of Iowa Workforce Development. That issue is remanded to the Claims Section for an initial determination and adjudication.

DECISION:

The November 22, 2010, reference 01, decision is reversed. The claimant is able and available for work but is not still employed at the same hours and wages as in her original contract of hire. Benefits are allowed effective the week ending October 23, 2010, provided the claimant is otherwise eligible to receive them. The issue of the claimant's subsequent separation from this employer is remanded to the Claims Section of Iowa Workforce Development.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs