

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

ERIN L HARRILL  
507 OAK ST  
LA PORTE CITY IA 50651

CARE INITIATIVES  
c/o JOHNSON & ASSOCIATES  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 05A-UI-03415-LT  
OC: 02-20-05 R: 03  
Claimant: Respondent (4)

**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)

Iowa Code § 96.4(3) - Able and Available  
Iowa Code § 96.5(1)a – Voluntary Leaving – Other Employment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the March 28, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 20, 2005. Claimant did participate. Employer did participate through Pam Tallman, Phyllis Clark, and Rose Niemeyer and was represented by Roxanne Beckaert of Talx UC Express.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time (32 hours per week, first shift, Monday through Friday) LPN through March 29, 2005 when she quit to accept other employment at Crestview Acres in Marion, Iowa where she remained employed as of the date of the hearing. The separation has

not yet been adjudicated at the fact-finding level, but the parties have agreed to have the separation determined via this hearing.

Claimant filed a claim after her full-time hours were cut for a week after her hours were cut due to a census reduction beginning January 2005. Employer offered her hours as a charge nurse on February 24 and 25, but claimant had asked for time off from work well in advance of the reduction in hours. Employer kept claimant off the schedule on February 21, 22, and 23, 2005. Claimant also attempted to pick up hours on second and third shifts and weekends. Claimant had worked second shift when first hired.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was available for work the week ending February 26, 2005 and voluntarily left her employment to accept employment elsewhere on March 29, 2005.

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".

Since claimant was available to work her regular hours on February 21, 22, and 23, 2005 but no work was available, partial unemployment benefits are allowed. Claimant had requested two days off from work (less than the majority of the work week) and properly reported her vacation pay. Thus the allowance of partial unemployment benefits for the week ending February 26, 2005 was correct.

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left her employment at Care Initiatives in order to accept other employment at Crestview Acres and is performing services for the subsequent employer. Accordingly, no disqualification because of the March 29, 2005 separation is imposed, benefits are allowed provided the claimant is otherwise eligible, and the account of the employer shall not be charged.

DECISION:

The March 28, 2005, reference 01, decision is modified in favor of the appellant. The claimant was available for work the week ending February 26, 2005 but her regular hours were not available. She then voluntarily left her employment on March 29, 2005 in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of employer Care Initiatives (account number 104318) shall not be charged for benefits based upon the separation of March 30, 2005 but is liable for partial unemployment benefits for the week ending February 26, 2005.

dml/sc