

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

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HEARTLAND UNEMPLOYMENT
SERVICES INC
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-04563-H2T
OC 03-14-04 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, 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 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 13, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 20, 2004. The claimant did participate. The employer did participate through (representative) Shelly Beard, Human Resources Manager and Wendy Ager, Administrative Director of Nursing Services.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a LPN beginning October 24, 2001 through date of hearing. On May 13, 2004 the claimant notified her employer that she would only be available for work in the future on an on call or as needed basis. From May 13, 2004 forward the claimant has refused

to accept hours of work offered to her, including refusing to work the weekend she had been previously scheduled to work on May 14, 15, 16, 2004. The claimant is currently employed full time for Harmony House.

The claimant began working for another part-time employer, Harmony House, during the first part of August 2003. From August 2003 until May 13, 2004 she limited her availability even further, the claimant worked an average of 15 hours per week for Harmony House. The only reason that the claimant was not getting scheduled for more hours for Heartland was because she herself was limiting her availability for work so she could work at Harmony House. The claimant asked that she not be scheduled any Thursday, only every other weekend and only every other Monday at Heartland. From August 2003 forward the claimant estimates she was working from 24 to 32 hours per week for Heartland. The claimant's wage record from all employment indicates that the claimant was working almost full time hours during the first quarter of 2004. The only reason the claimant's hours were ever reduced at Heartland were due to her own requests for time off, her inability to work due to illness, or her own poor attendance issues. With the claimant working 24 to 32 hours per week at Heartland and 15 hours per week at Harmony House, she was effectively employed full time so as to remove her from the labor market.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant's availability for work is considered based on all the hours she worked for all of her employers. The claimant was working full time hours between two separate employers, thus effectively removing her from the labor market. Since May 13, 2004 the claimant has refused any hours other than on an as needed basis as she is working full time for another

employer. Accordingly, benefits are denied. The claimant was not able and available for work effective March 14, 2004.

DECISION:

The April 13, 2004, reference 01, decision is affirmed. The claimant is not able to work and available for work effective March 14, 2004. Benefits are denied.

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