

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL L ROQUET
Claimant

APPEAL NO. 08A-UI-08473-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT MEDICAL CENTER
Employer

OC: 07/20/08 R: 03
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 18, 2008, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 8, 2008. Claimant participated. Employer participated through Todd Hoyer, clinic director, and Kris Marmie, human resources associate.

ISSUE:

The issue is whether claimant is able to and available for work effective July 20, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time (36 hours per week) LPN office nurse from September 1, 1997 until September 15, 2008 when she quit. Her last day of work was May 16, 2008 and on May 19 she began a personal leave of absence through August 15 to try to find another job within the system. That 90-day leave was extended another 30 days for a job search and her supervisor Hoyer told her on September 15 that she must return to her former position or be separated from employment. Claimant opted not to return. She took the leave primarily because of her frustration with her only coworker Andrea who caused claimant to have extra work by arriving tardy, being absent frequently, not returning patient and attorney phone calls in a timely manner, taking personal phone calls at work, and mishandling paperwork. The office duties were normally handled by two nurses. While she did not believe Hoyer was responsive to these concerns, employer was taking disciplinary action against Andrea but could not discuss the personnel issues with claimant. Hoyer was also attempting to find additional help for the office and was able to do so shortly after claimant went on leave when another physician's nurse, Gail, worked part-time. Andrea left the employment on September 11 and claimant was aware of her departure when she declined to return to her job on September 15. Although claimant said she "mentally could not go back" she did not seek medical care or a medical opinion and based her decision not to return on other "coworkers" in the building, even though they did not work in that office suite. Continued work was available at any time during the leave and through September 15, 2008.

Claimant applied for 15 positions during the leave of absence but some required evenings or weekends, for which she declined to make herself available. The others required specific experience as a medical secretary or billing training in spite of how other employees in the building may have come by their jobs.

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 § 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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.23(3) provides:

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Since claimant was unwilling to return to her job even though the conditions for which she had gone on leave had changed, she was unwilling to work at jobs for which she was qualified because of the shift requirements and was not qualified for the other jobs, she is considered unavailable for work from July 20 through the September 15, 2008 separation date. Accordingly, benefits are denied.

DECISION:

The September 18, 2008, reference 02, decision is affirmed. The claimant is not able to work and available for work effective July 20, 2008. Benefits are denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs