

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAFFAT SORATHIA**  
Claimant

**APPEAL NO. 10A-UI-14039-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HALLMARK CARE CENTER**  
Employer

**OC: 06-20-10**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.22(2)i(1) – Able and Available - On Call  
871 IAC 24.22.(2)i(3) – Able and Available - On Call Workers

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 8, 2010, reference 06, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 22, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as an on-call PRN nurse for Hallmark Care Center July 20, 2010. She went through orientation between July 20, 2010 and August 1, 2010, and earned the required \$250.00. She has not been called for a shift at the care center since orientation. The claimant previously worked full-time for Mercy Hospital, so her wage credits were not earned solely in on-call work and she is willing to accept any work, whether on-call, part-time, or full-time. The claimant's husband died Friday, August 13, 2010, and his funeral was Monday, August 16, 2010. She was available to work the weeks ending August 14 and August 21, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is 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 24.22(2)i(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

871 IAC 24.22(2)i(3) 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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant has not refused any work, either waiting for on-call work or part-time or full-time work, nor do her base period wages consist solely of wage credits earned doing on-call work. Additionally, she credibly testified she was able to work the week of her husband's death on Friday, August 13, 2010, as well as the week of his funeral which was Monday, August 16, 2010. Even if she was unavailable on those two days she was available the majority of those

work weeks. Accordingly, benefits are allowed for the dates between August 8, 2010 and October 9, 2010.

**DECISION:**

The October 8, 2010, reference 06, decision is reversed. The claimant is able to work and available for work effective August 8, 2010. Therefore, benefits are allowed.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw