

**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**

**SELINA L CARETHERS
2239 TAYLOR DR
IOWA CITY IA 52240**

**HCM INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-02749-DWT
OC 01/18/04 R 03
Claimant: Appellant (2)**

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 are 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 to and Available for Work

STATEMENT OF THE CASE:

Selina L. Carethers (claimant) appealed a representative's March 1, 2004 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits for the weeks ending January 24 and 31, 2004 because she was not able to and available to work for HCM, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 2, 2004. The claimant participated in the hearing. Kim Hauser, the administrator, and Nancy Upmeyer, the director of nursing, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work during the weeks ending January 24 and 31, 2004?

FINDINGS OF FACT:

The claimant works for the employer. From December 25, 2003 to January 9, 2004, the claimant was ill and unable to work. The claimant's doctor released her to return to work as of January 9, 2004.

On January 8, 2004, the claimant went to work to pick up her paycheck. The employer asked the claimant if she could work the next day. The claimant told the employer that even though her doctor had just released her to work, she had to make child care arrangements again. The claimant understood she needed a doctor's statement verifying she could return to work and provided the doctor's statement to the employer. The director of nursing, however, did not personally see the doctor's release until the week of January 18, 2004. Since January 12, the claimant called once or twice a week to see if the employer had any work for her to do.

The claimant established a claim for unemployment insurance benefits during the week of January 18, 2004. The employer did not assign the claimant any work during the weeks of January 18 and 25. When the claimant returned to work on February 5, the employer told her census had been low and the employer did not have any work to assign her prior to February 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work. Iowa Code §96.4-3. The facts establish the claimant was able to and available for work as of January 9, 2004. When the claimant established her claim for benefits, she had already contacted the employer several times and asked if there was any work for her to do. Even though the employer did not assign the claimant any work, the claimant was able to and available for work from January 18 through 31, 2004. The claimant established she is able to and available for work during these weeks.

DECISION:

The representative's March 1, 2004 decision (reference 02) is reversed. The claimant established she was able to and available for work during the weeks ending January 24 and 31, 2004. Based on these eligibility requirements, the claimant is eligible to receive benefits for these weeks.

dlw/kjf