

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLAUDIA NELSON**

Claimant

**APPEAL NO. 06A-UI-11086-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESSIBLE MEDICAL STAFFING**

Employer

**OC: 10/22/06 R: 02  
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 15, 2006, reference 02, that concluded she was not able to work. A telephone hearing was held on December 4, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Karey Sego participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant able to and available for work?

Was the claimant working part-time

**FINDINGS OF FACT:**

The employer is a medical staffing service that provides workers to client businesses and individuals on a temporary on-call/as-needed basis. The claimant worked for the employer from May 2000 to July 21, 2006. The work assignments were short-term and often for just one day. The employer does not have a work rule that an employee will be considered to have quit if she fails to contact the employer seeking work within three days after completing an assignment. The claimant always had other jobs while working for the employer and the arrangement was that she would contact the employer to let them know if and when she was available for work, depending on the schedules of her other jobs.

The claimant worked in a variety of health-related jobs, some as a patient technician in hospitals that involved nurse's aide-type work and some lifting and others in companion and sitter shift jobs that involved minimal physical exertion.

The claimant had a child by cesarean section on July 26, 2006. She did not contact the employer about her condition because the arrangement was that she would contact the employer when she wanted to work. The lead staffing coordinator, Karey Sego, spoke with the claimant on August 2 because she had heard that she was pregnant and had her baby. The claimant confirmed this. Sego told the claimant she would need a doctor's release to return to work.

On August 24, 2006, the claimant was injured in a car accident and was initially unable to work due to her doctor's orders. She contacted a staffing coordinator about the injury and she again was told she would need a medical release.

Around October 24, 2006, the claimant presented a release to return to work to the employer. The release restricted the claimant to light-duty work. The employer did not have any companion or sitter shifts because it had lost the hospital contract that provided such work. The claimant was not able to perform all the duties of a patient technician. The claimant was told that she would need a full release to return to work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 22, 2006. As of October 22, 2006, the claimant was restricted to light-duty work with lifting of no more than 20 pounds. The claimant would have been able to do the companion and sitter shift work and other work not involving lifting over 20 pounds.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy lifting. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform.

The evidence establishes the claimant's work arrangement was that she let the employer know when she was available to accept assignments. The employer does not have a work rule that an employee will be considered to have quit if she fails to contact the employer seeking work within three days after completing an assignment. The claimant, therefore, has not quit employment or been discharged. While the law provides that claimants will not be considered unemployed if they are still employed in a part-time job at the same hours and wages as the original contract of hire, this provision does not apply since the claimant was not working part-time for the employer. See 871 IAC 24.23(26).

While the claimant is not ineligible under the availability sections of the law, she remains disqualified from receiving unemployment insurance benefits based on her separation from employment with Center for Long-term Care of Iowa.

### **DECISION:**

The unemployment insurance decision dated November 15, 2006, reference 02, is reversed. The claimant was able to and available for work as of the effective date of her claim. Benefits

are not denied on that basis. She remains disqualified from receiving unemployment insurance benefits based on her separation from employment with Center for Long Term Care of Iowa.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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