

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CORA V HAEFS
Claimant

APPEAL NO. 15A-UI-10984-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HELPING HANDS NURSING SOLUTIONS
Employer

OC: 05/03/15
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the representative's decision dated September 23, 2015, reference 07, which denied unemployment insurance benefits as of August 30, 2015, finding that the claimant had placed undue limitations on her availability for work and therefore did not meet the availability requirements of the law. After due notice was provided, a telephone hearing was held on October 15, 2015. The claimant called in late, however the employer was agreeable to doing the hearing later that same day. Ms. Haefs participated personally. The employer participated by Mr. Taylor Doeschot, the owner and Ms. Holly Delagarva, Co-owner.

ISSUE:

At issue is whether the claimant is able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: Cora Haefs most recently began employment with Helping Hands Nursing Solutions in July 2015. Ms. Haefs was hired as a part-time certified nursing assistant with no guarantee as to the minimum number of work hours each week. The working hours available to the claimant are dependent upon the employer's needs and Ms. Haefs' availability to work. Ms. Haefs is paid by the hour for her work with the nursing staffing agency.

Although the claimant is not guaranteed any minimum number of working hours each week in her position as a part-time CNA for this medical staffing agency, the agency routinely has working hours available to CNAs.

Ms. Haefs has limited her availability to be sent on numerous assignments at nursing facilities because the claimant's demeanor on those assignments has resulted in the clients specifically requesting that Ms. Haefs not be assigned to their facilities again. The clients of Helping Hands Nursing Solutions are not willing to accept Ms. Haefs back at their facilities to work because of

repeated rudeness on the part of the claimant, discrepancies in timecards and the propensity for Ms. Haefs to call off from work assignments that she had previously accepted.

In addition to the numerous facilities that requested that Ms. Haefs not be assigned to them because of her demeanor while working at their facilities, the claimant has also declined numerous job assignments through Helping Hands Nursing Solutions.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time worker with no guarantee as to the minimum number of hours she would be assigned each week. The job assignments through this employer depended upon the employer's needs and the claimant's availability to accept assignments that are offered to her. The claimant was still employed in a part-time position as was agreed to at the time that she was hired. She understood at the time of hire that her hours were dependent upon the needs of the clients of her employer. That has not changed. The evidence in the record also establishes the claimant has in effect made herself unavailable for work for numerous assignments by the demeanors that she displayed at the work assignments and that on numerous occasions the claimant has declined to accept assignments that were offered to her by this employer.

Having considered the disputed testimony in this matter at length, the administrative law judge finds the employer's witnesses to be more credible and assigns more weight to their testimony. The administrative law judge concludes that the claimant is disqualified from receiving unemployment insurance benefits because she is not available for work due to her employment with this company and because she has set up numerous barriers to her availability on other assignments that had been offered to her.

DECISION:

The representative's decision dated September 23, 2015, reference 07, is affirmed. The claimant has unduly limited her availability for work and does not meet the availability requirements of the law. Benefits are denied as of August 30, 2015 and until the claimant wants to remove limitations on her availability.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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