

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN M PINEGAR
Claimant

APPEAL NO. 11A-UI-12094-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

**OC: 04-17-11
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 13, 2011, reference 07, decision that denied benefits. After due notice was issued, a hearing was held on October 6, 2011. The claimant did participate. The employer did participate through Ted Powell, Administrator and Lori Piziali, Director of Nursing.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a certified nursing assistant or medication aide beginning on February 10, 2009 through date of hearing as he remains employed. The claimant was hired to work full time but on February 23, 2011 he requested a change from full-time hours to PRN or as-needed hours so that he could return to school. The employer had full-time regular hours available for the claimant but he was unwilling to continue working full time.

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 24.23(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.

Full-time work was available to the claimant but he chose to attend school and work only as needed. Under such circumstances he is not considered able to and available for work. Accordingly, benefits are denied.

DECISION:

The September 13, 2011 (reference 07) decision is affirmed. The claimant is not able to work and available for work effective February 23, 2011. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css