

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SHAMONTA Y WILLIAMS

Claimant

APPEAL NO: 19A-UI-02678-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC

Claimant

OC: 02/24/19

Claimant: Respondent (2R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Grapetree Medical Staffing (employer) appealed a representative's March 26, 2019, decision (reference 05) that concluded Shamonta Williams (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 17, 2019. The claimant participated personally. The employer participated by Gidget Wingad, Human Resources Specialist.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 14, 2015, as an on-call part-time certified nursing assistant/certified medication aid. The employer is a staffing agency. Before she was hired the employer notified the claimant that employees must agree to be available three or more days per week and work within a fifty to sixty mile radius. The claimant did not have any restrictions on her availability.

The claimant worked through March 4, 2019, when she received a second warning. The claimant was tardy for work because of transportation issues. She did not want to risk receiving another warning so she did not accept another assignment.

She had other reasons for not accepting assignments. The claimant did not want to travel to assignments an hour away from home. She thought she did not have the proper credentials to work in a medical facility in Illinois because her tuberculosis screening occurred in Iowa. She was caring for her two-year-old child during the daytime and could only work from 2:00 p.m. to 10:00 p.m. Starting April 18, 2019, she would be a part-time student studying from 8:00 a.m. to 11:00 a.m. every day to become a nurse practitioner.

The employer sent the claimant texts, alerts and emails with emergency placements, day shifts, and shifts lasting four or more weeks. The claimant accepted no offers after March 4, 2019. On April 10, 2019, the claimant sent a text to the employer stating she had a preference for an assignment in town. On April 12, 2019, the claimant sent a text to the employer indicating she could only work second or third shifts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able and available for work as of March 3, 2019.

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".

also

871 IAC 24.23(17) provides:

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

871 IAC 24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee unreasonably limits the hours she is willing to work or has not made arrangements for child care, she is considered to be unavailable for work. The claimant refused to work any hours under the guise that she would work limited shifts due to lack of child care. The claimant is disqualified from receiving unemployment insurance benefits as of March 3, 2019, due to her unavailability for work.

The issue of the overpayment of unemployment insurance benefits is remanded for determination.

DECISION:

The representative's March 26, 2019, decision (reference 05) is reversed. The claimant is not able and available for work as of March 3, 2019. The issue of the overpayment of unemployment insurance benefits is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs