

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA L HUGGINS
Claimant

APPEAL NO. 13A-UI-08527-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/23/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated July 19, 2013, reference 02, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a hearing was held on August 26, 2013. The claimant participated personally. The employer participated by Nancy Synder, Administrator. The employer was represented by Alyce Smolsky. The record consists of the testimony of Nancy Snyder and the testimony of Rebecca Huggins.

ISSUES:

Whether the claimant is still employed at the same hours and wages; and
Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nursing home located in Panora, Iowa. The claimant was hired on July 11, 2013, as a part-time dietary aide. She was not guaranteed any number of hours per week. The employer defines part time as 30 hours or less per week.

On May 15, 2013, the claimant requested a transfer to housekeeping. The hours for that job were eight days every two weeks for twenty-eight hours per week. She remained in the housekeeping department for one month. The claimant then requested a transfer to the laundry department. The claimant wanted to transfer to the laundry department because she thought she would get more hours once another employee left. The claimant was a no-call/no-show on June 19, 2013, and June 26, 2013. She refused shifts on July 1, 2013, and July 5, 2013. She also refused training hours.

The claimant's last day of actual work was August 8, 2013. On August 12, 2013, the claimant's physician put her on a ten-pound lifting restriction. The employer cannot accommodate that

restriction. The reason for the restriction is that the claimant is pregnant and has issues with her heart and blood pressure. The claimant is still employed by the employer.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(16) and (26) 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.

(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 is not eligible for unemployment insurance benefits. The claimant is still employed by the employer at the same hours and wages as in the contract for hire. The evidence showed that new contract for hire was entered into on June 19, 2013, when the claimant transferred to the laundry department. The claimant transferred because she thought she would get more hours once another employee left. The claimant was nevertheless dissatisfied with her hours and she filed an unemployment claim with an original claim date of June 23, 2013. The claimant's hours were less than she wanted primarily because she was either a no-call/no-show or refused hours. She was not, therefore able and available for work as of June 23, 2013.

The claimant did work in July 2013 and August 2013. Her last day of actual work was August 8, 2013. The reason she is not working now is due to restrictions as a result of her pregnancy. The employer is not required to accommodate the claimant for a non-work-related medical condition. The restrictions were imposed on August 12, 2013. The claimant is not able and available for work due to these restrictions.

DECISION:

The decision of the representative dated July 19, 2013, reference 02, is affirmed. The claimant is not eligible to receive either partial or full unemployment insurance benefits as of June 23, 2013.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css