

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIANNE L MANLEY
Claimant

APPEAL NO. 100-UI-11426-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NURSEFINDERS OF DES MOINES
Employer

OC: 03-14-10
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 20, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 29, 2010. The claimant did participate. The employer did not participate.

ISSUE:

The issue is whether the claimant is 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 nurse full time beginning in February, 2007 through date of hearing as she remains employed. At the time of hire she was not guaranteed any certain minimum number of hours per day or per week. However, in October of 2007 the employer offered her a “flex” plan where she was guaranteed 32 hours per week and she agreed to work anywhere at any time. She continued on the flex contract for the next two years. In September 2009 work had slowed and the employer did not offer her another 12-week flex contract. She was ready willing and able to work, but the employer did not have such work available for her. The next time the claimant was offered a 12-week flex contract was on May 12, 2010, which she accepted and continues to work to date of hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is 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".

The record establishes that the claimant is ready, willing and able to work whatever hours and whatever locations the employer offers her. The majority of her base period wages were in the 32-hour-guarenteed, 12-week flex contract situation, and that is the criteria by which her availability should be measured. As of the effect date of her claim, she was not working the 32-hour flex contract she had been working the past two years, but was able to do so. Thus, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 20, 2010 (reference 01) decision is reversed. The claimant is able to work and available for work effective March 14, 2010. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css