

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERTHA L JOHNSON
Claimant

APPEAL NO: 07A-UI-05848-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDICAL STAFFING NETWORK INC
Employer

OC: 05/06/07 R: 02
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 30, 2007, reference 06, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 27, 2007. Claimant participated. Employer participated through Cheryl Perparcy and was represented by Beth Crocker of Employers Unity.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as a temporary CNA and works when work is available and when the assignments do not interfere with her other employment and schedule at Child Serve.

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 24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.23(3) provides:

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

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.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Since claimant's availability to work for this employer is affected by her other work schedule and her work history with this employer is on a temporary assignment by assignment basis without promises of guaranteed hours, claimant is not fully available for work or fully or partially unemployed with this employer. Accordingly, benefits are denied.

DECISION:

The May 30, 2007, reference 06, decision is affirmed. The claimant is not able to work and available for work with Medical Staffing Network Inc. effective May 6, 2007. Benefits are denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs