

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LASHA BATEMAN**  
Claimant

**APPEAL NO. 09A-UI-14482-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MEDICAL STAFFING NETWORK INC**  
Employer

**Original Claim: 08-23-09  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 25, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 21, 2009. The claimant participated in the hearing. Jodi Faust, Area Manager, and Marcy Schneider, Employer Representative, participated in the hearing on behalf of the employer. The hearing notice incorrectly listed the potential issues as discharged for misconduct or voluntarily left for good cause attributable to the employer. The issue listed should have been whether the claimant is able and available for work. The parties were asked if they wished to waive notice on the able and available issue and both agreed to do so.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time, PRN, per diem CNA for Medical Staffing Network October 23, 2005. She was told at the time of hire there was no guarantee of hours, because hours depended on the clients' needs and clients can cancel services at any time. The employer also discusses the potential employee's availability at the time of hire and the claimant indicated she was available for any hours on any shift. The claimant had several 40-hour weeks and a lot of overtime from February 8, 2009 to May 17, 2009, and also the week of May 31, 2009, because the employer was busy and the claimant's "availability is great." The week of June 7, 2009, she worked 38.5 hours. The week of June 14, 2009, the claimant worked 29.75 hours. The week of June 21, 2009, she worked 41.5 hours. The week of June 28, 2009, she worked 20.25 hours because after the schedule was posted she said she could not work June 23, 24, and 25, 2009, because she did not have childcare. The week of July 5, 2009, she was scheduled for five shifts but two were cancelled by the client, so the claimant worked 17.5 hours. The week of July 12, 2009, the claimant was scheduled to work six shifts but three were cancelled by the client and the claimant said she could not work one of the remaining three shifts. The week of July 19, 2009, the claimant was scheduled one shift. The week of July 26, 2009, she was scheduled to work six shifts but two were cancelled by the client. The week of August 2, 2009, she was scheduled to work eight shifts but three were cancelled by the client and two were cancelled by the claimant. The week of August 9, 2009, the claimant was scheduled five shifts and worked four but cancelled one. The week of August 16,

2009, the claimant was scheduled to work four shifts but two were cancelled by the client. On September 22, 2009, the claimant notified the employer she would only be available Monday through Friday daytime hours. The employer testified it has had a few less hours in 2009 because of the economy but did have work for the claimant.

**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 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".

The claimant was hired as a part-time, PRN, per diem CNA and the employer told her at the time of hire it could not guarantee her a specific number of hours per week due to the nature of its business. While the claimant may have indicated she was available to work any hours on any shift, her willingness to work is not the issue. Because the claimant is available to the employer Monday through Friday daytime hours, she has effectively removed herself from the job market, as she is not in a position to accept other employment while working for this employer. Being able and available for other work is an eligibility requirement for unemployment benefits. Accordingly, benefits are denied.

**DECISION:**

The September 25, 2009, reference 02, decision is affirmed. The claimant is not able to work and available for work effective August 23, 2009. Benefits are denied.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw