

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY K WEISHUHN
Claimant

APPEAL NO. 10A-UI-11056-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ULTIMATE NURSING SERVICES
Employer

OC: 06/06/10
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Kimberly Weishuhn filed a timely appeal from the August 3, 2010, reference 01, decision that denied benefits based on an Agency conclusion that she was unduly restricting her work availability. After due notice was issued, a hearing was held on September 23, 2010. Ms. Weishuhn participated. Wendy Dennis, Human Resources Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to Ms. Weishuhn and wages reported by or for Ms. Weishuhn. The administrative law judge took official record of nursing license verification information contained at www.nursing.iowa.gov.

ISSUE:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kimberly Weishuhn established a claim for benefits that was effective June 6, 2010. Ms. Weishuhn established the claim in response to her layoff from M G Midwest, Inc. (Movie Gallery), employment account number 290421. The layoff occurred in the context of a business closing. Ms. Weishuhn had worked at Movie Gallery since 2006 and was the full-time store manager at the end of that employment. Ms. Weishuhn is also a Licensed Practical Nurse, L.P.N. Ms. Weishuhn's nursing license expired on June 15, 2010. Ms. Weishuhn knew prior to that time that her nursing license was about to expire.

On May 19, 2010, Ultimate Nursing Services (employer account number 270341) hired Ms. Weishuhn to work as an L.P.N. Ms. Weishuhn went through a day of orientation. As part of the orientation process, Ms. Weishuhn was required to provide the employer with a copy of her nursing license. When Ms. Weishuhn was unable to provide a copy of her nursing license, she was unable to start the nursing work. Ms. Weishuhn told the employer that she would "try" to renew her license. Ms. Weishuhn's nursing license was not reinstated until September 22,

2010. Ms. Weishuhn first had to complete continuing education credits and pay a licensing fee before the license could be renewed.

Ms. Weishuhn was without a car from the beginning of April 2010 until the end of June 2010.

Ms. Weishuhn started her search for new employment a week after she established her claim for unemployment insurance benefits. Ms. Weishuhn did not have a log of her job contacts available for the hearing. Ms. Weishuhn recalls that she had an interview at a Wal-Mart on August 16, 2010. On September 22, 2010, Ms. Weishuhn started part-time employment at Pizza Hut, 6-10 hours per week.

On August 30, 2010, Ms. Weishuhn started her studies in health information technology via an Internet-based program offered by Northwest Iowa Community College. On August 23, 2010, a Workforce Development representative authorized the claimant's participation in department approved training effective August 29, 2010 through June 4, 2011.

REASONING AND CONCLUSIONS OF LAW:

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".

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.

The period at issue in this matter is June 6, 2010, the effective date of the claim for benefits, through the benefit week that ended August 28, 2010. The claimant's authorization for department approved training effective August 29, 2010, relieved her of the obligation to search for work or to make herself available for work through June 4, 2011, provided she continued to fully participate in the approved educational program. The approval for department approved training also relieved any affected employers of liability for benefits paid to the claimant while she continued under the department approved training status.

The weight of the evidence fails to establish that Ms. Weishuhn met the work availability requirements of Iowa Code section 96.4(3) between June 6, 2010 and August 28, 2010. Ms. Weishuhn was without transportation until the end of June. Ms. Weishuhn was without her professional license from June 15, 2010 until September 22, 2010. Ms. Weishuhn has failed to provide sufficient proof of an active and earnest search for new, full-time employment between June 6 and August 28, 2010, despite her obligation to do so. Ms. Weishuhn is not eligible for benefits for the period of June 6, 2010 through August 28, 2010.

DECISION:

The Agency representative's August 3, 2010, reference 01 is modified as follows. The claimant did not meet the work availability and job search requirements of Iowa Code section 96.4(3) during the period of June 6, 2010 through August 28, 2010 and is not eligible for benefits for that period.

The claimant's approval for department approved training effective August 29, 2010 through June 4, 2011 makes it unnecessary for the administrative law judge to rule on the claimant's work availability for the period beginning August 29, 2010. The claimant would be eligible for benefits for the period of the department approved training, provided she is otherwise eligible.

The claimant's availability will need to be examined anew if she prematurely discontinues her participation in the department approved training or continues her claim for benefits before the period of department approved training.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs