

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VINA M EARLES**

Claimant

**APPEAL NO: 08A-UI-01621-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHILDSERVE HABILITATION CTR INC**

Employer

**OC: 12/30/07 R: 02  
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available  
Section 96.19-38-b – Partial Unemployment

**STATEMENT OF THE CASE:**

ChildServe Habilitation Center, Inc. (employer) appealed a representative's February 8, 2008 decision (reference 01) that concluded Vina M. Earles (claimant) was qualified to receive unemployment insurance benefits in conjunction with her employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on March 4, 2008 and reconvened and concluded on March 11, 2008. The claimant participated in the hearing. Amanda Bowley appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 3, 2001. Through November 23, 2007 she worked full time as an L.P.N. in the employer's organization providing direct care for special needs children.

The claimant had suffered a prior work-related injury which had been covered under the employer's workers' compensation program. By August 2, 2007, the workers' compensation carrier concluded that the claimant had reached maximum medical improvement from the injury and that she was released with a 2.0 percent permanent impairment. The claimant continued to suffer pain, however, and returned to her doctor as of November 23 and was taken off work.

The claimant saw her doctor on December 10 and he indicated that she had an underlying condition of arthritis which her prior injury and her regular job duties was aggravating. As a result, he placed her on permanent work restrictions of no standing or walking in excess of four hours, no lifting over 25 pounds, and no squatting or kneeling. The claimant provided this

information to the employer. Since the claimant's underlying condition was not "caused" by the work or the injury, the employer determined that since the claimant could no longer perform her regular job duties she would be placed on a per diem on call basis.

The claimant has remained available for work with the employer within her restrictions as has become available.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

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.

Iowa Code § 96.19-38(b) provides in pertinent part:

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

Unlike workers' compensation eligibility, for a medical condition to be "work-related" for purposes of unemployment insurance law, the medical condition need not be "caused" by the work place or an injury on the job; rather, there need only be a showing that the medical condition is "aggravated" by the work place or something on the job. 871 IAC 24.26(6)b. The administrative law judge concludes that the claimant has shown that while her arthritis may be an underlying condition not "caused" by the work place, it has been aggravated by the work place or her prior injury on the job.

As a result, the administrative law judge concludes that this case is governed by the analysis in FDL Foods, Inc. v. Employment Appeal Board, 460 N.W.2d 885 (Iowa App. 1990). In that case, the employee also had a pre-existing medical condition which was not caused by the job, but was aggravated by the workplace, resulting in permanent work restrictions from his doctor. As he could not perform his regular job due to his restrictions, and other work within his restrictions was not readily available to him from his employer, he filed a claim for unemployment insurance benefits seeking benefits for weeks in which the employer did not provide him with sufficient work. His employer challenged his eligibility on the basis he was not able and available for work because he was no longer truly a full time employee, but rather was “in essence . . . an on-call worker since his medical restrictions will not permit him to do the only permanent full-time job to which he is . . . entitled . . .”

The court rejected that employer’s argument that the employee was truly only an “on-call” employee essentially because it was the employer, not the employee, who effectively controlled whether he worked full time or not, by whether it would or could provide work within his restrictions. The court further indicated that the claimant was adequately able and available for work as he had made himself readily available to his employer for any work it would or could provide for him. Likewise, the claimant in this case is only on a per diem or on-call basis because the employer cannot otherwise provide regular work within her restrictions. She also has made herself readily available to this employer for any work it does provide for her.

While this analysis avoids the need to consider whether there has been a separation and rehiring into a different position between the parties, following the analysis of the FDL Foods decision, the administrative law judge observes that any separation that could be asserted to have occurred prior to the claimant’s filing of her claim for benefits would not be a voluntary quit on the part of the claimant, as she has demonstrated that she had no intent to quit and has continued to seek work with the employer. 871 IAC 24.25. As it could not be treated as a voluntary quit, any separation would have to be treated as a discharge. 871 IAC 24.26(21); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). For a discharge to be disqualifying, the employer would have to establish that it was for work-connected misconduct, which the employer has not urged or shown. Iowa Code § 96.5-2-a; 871 IAC 24.32(1)a; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

#### **DECISION:**

The representative’s February 8, 2008 decision (reference 01) is affirmed. The claimant is able to work and available for work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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