

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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AMENDED

Appeal Number: 06A-UI-01917-ET
OC: 01-08-06 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.22(2)i(3) - On Call Workers
Section 96.7-2-a - Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 9, 2006, 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 March 7, 2006. The claimant participated in the hearing. Kathy Heuwinkel, Benefit Specialist, and Mary Krueger, Director of Psychiatric Services, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an on-call certified patient assistant for Jennie Edmundson Memorial Hospital beginning July 14, 2005. She was hired as a full-time employee June 20, 2005, but asked to become an on-call employee July 14, 2005, due to some personal problems she was experiencing. The claimant agreed to work two shifts in August 2005 but was unable to work those shifts because of family emergencies. In late September 2005, Mary Krueger, Director of Psychiatric Services, tried to contact the claimant by phone and e-mail and finally reached her father who provided a cell phone number but the employer was uncomfortable using that number and consequently she sent the claimant a certified letter September 27, 2005. The letter stated that if the claimant did not contact the employer by October 11, 2005, the employer was going to start the termination process. The claimant contacted the employer October 10, 2005, and said she assumed she had already been terminated but wanted to return to work. The employer retrained the claimant for other positions and she filled in for sick or absent employees before taking over for an employee on FMLA due to pregnancy until January 6, 2006, at which time that employee returned and the claimant continued her on-call status. The employer's census had dropped and therefore, it did not have a full-time job for the claimant at that time. She was hired as a full-time employee February 17, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is still employed at the same hours and wages as contemplated in the original contract of hire.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.
 - a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

871 IAC 24.22(2)i(3) 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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

As an on-call employee beginning July 14, 2005, the claimant was not available for work again until after the employee on FMLA returned from maternity leave January 6, 2006. While the claimant worked some full-time hours at the beginning of her employment, she initiated the conversation to go to on-call status in July because she was not able to work full-time at that point. When she returned in September, her status had not changed but the employer did have further work for her to do, although she was still not considered full-time. She covered for one person in particular who was absent due to FMLA leave before she returned to her position January 6, 2006. At that point, the claimant did not have a position within the hospital besides on-call work until she was offered the full-time position in the emergency room February 17, 2006. Therefore, the administrative law judge must conclude that the claimant was an on-call status employee until hired full-time February 17, 2006. Therefore, benefits must be denied.

DECISION:

The February 9, 2006, reference 02, decision is affirmed. The claimant was an on-call employee until February 17, 2006, and was not considered available for work as defined by Iowa law during that time. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/kkf