

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

LEKEISHA VEASLEY
713 MOBILE ST
WATERLOO IA 50703

WHITES IOWA INSTITUTE QUAKERDALE
PO BOX 8
NEW PROVIDENCE IA 50206

Appeal Number: 04A-UI-10316-ET
OC: 08-22-04 R: 03
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, 2nd 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)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 16, 2004, reference 01, that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 14, 2004. The claimant participated in the hearing. Tara Jenson, Director of Administrative 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 hired as a relief residential counselor for Whites Iowa Institute Quakerdale on October 25, 2001. She requested a change from full-time to part-time so that she could attend school. The employer accommodated its employees as long as it could but due to the number

of employees needing accommodation to go to school, the employer had to change policy and could no longer offer any accommodation. The claimant's classes interfered with her work schedule so she went to on-call status.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able 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".

871 IAC 24.23(5), (16) provide:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

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.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant has limited her availability to work due to her school schedule and her classes are not required for her current position. Inasmuch as the claimant does not meet the availability requirements of the law, benefits are denied.

DECISION:

The representative's decision dated September 16, 2004, reference 01, is affirmed. The claimant is not able to work and available for work effective August 22, 2004. Benefits are denied.

je/kjf