

**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**

**WENDY J HEIKES  
664 9<sup>TH</sup> ST NW  
SIOUX CENTER IA 51250**

**AG BEUKELMAN PC  
3338 430<sup>TH</sup> ST  
ORANGE CITY IA 51041**

**Appeal Number: 04A-UI-03274-B4T  
OC: 02/08/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Whether Claimant is Able and Available for Work  
Section 871 IAC 24.23(18) – Whether Claimant had Adequate Childcare Arrangements

STATEMENT OF THE CASE:

Wendy J. Heikes appealed from an unemployment insurance decision dated March 12, 2004, reference 02, that held, in effect, the claimant had not made adequate arrangements for childcare, which unduly limited her availability for work. The claimant did not meet the availability of requirements of the law and benefits were denied as of February 8, 2004.

A telephone conference hearing was scheduled and held on April 26, 2004 pursuant to due notice. Wendy J. Heikes participated. Sheryl Beukelman responded to the notice of hearing by providing a telephone number where she could be called at the time of the hearing. A call placed to Sheryl Beukelman resulted in a conversation during which Ms. Beukelman indicated that the owner informed her not to participate in the hearing.

Official notice was taken of the unemployment insurance decision dated March 12, 2004, reference 02, together with the pages attached thereto (5 pages in all).

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Wendy J. Heikes was employed with AG Beukelman, P.C. which operates a veterinary clinic on April 15, 2002. The claimant was hired at the rate of \$7.00 per hour and performed a number of job duties which included assisting in surgery matters and office work. Sheryl Beukelman employed the claimant and informed her that she would be working approximately 30 hours per week. The hours were to be flexible and the claimant entered upon her employment working a variety of days on an on-call basis when needed by the employer.

The claimant became pregnant and discussed the matter with Sheryl Beukelman again. The claimant was scheduled for fewer hours at her request and fewer days of work.

On December 2, 2003, the claimant left work to give birth to her child. The claimant then requested eight weeks off work following the birth of her child, which was granted by the employer. The claimant was apparently released to return to work on or about January 19, 2004 by a licensed and practicing physician. The claimant then held a conversation with Sheryl Beukelman on February 10, 2004. The claimant informed Sheryl Beukelman that her sister would baby-sit for her for two days and her mother would baby-sit for her for one day. The claimant requested that she work three days each week and that her salary be increased. During the third quarter of 2003 and the fourth quarter of 2003 the claimant became employed with Northwest Iowa Community School. The claimant made arrangements to teach classes allegedly during the evening hours only. The claimant is still employed with Northwest Iowa Community School and working a part-time job when called. The claimant had limited her availability for work with AG Beukelman, P.C. and was scheduled only to work on Saturdays because she had not made arrangements for childcare in a manner, which would enable her to return to work under the terms and conditions of her original contract of hire. The claimant remains employed with AG Beukelman, P.C. and works on Saturdays only.

#### 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 24.23(18) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

871 IAC 24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant clearly has unduly limited her availability because she is only willing to work in a specific area during specific days. Although suitable work was available with the original employer, AG Beukelman, P.C. had she agreed to return to work under the same terms and conditions of her original contract of hire. The claimant has limited the major portion of the workweek she previously was scheduled to by AG Beukelman, P.C. The claimant has not been able to make arrangements for childcare, which would enable her to return to work under the same terms and conditions that she was originally employed.

The administrative law judge concludes that Wendy J. Heikes is unavailable for work effectively on and after February 8, 2004 within the intent and meaning of Iowa Code Section 96.4-3 and the foregoing sections of the Iowa Administrative Code. The claimant however, was allowed to return to work at a later point in time on Saturdays only for the employer, AG Beukelman, P.C. at the same wages.

DECISION:

The unemployment insurance decision dated March 12, 2004, reference 02, is affirmed. Wendy J. Heikes is not eligible to receive unemployment insurance benefits effective on or about February 8, 2004 because of not having made adequate arrangements for childcare which unduly limited her availability for work.

kjf/b