

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANNIE D HEATH

Claimant

APPEAL NO. 07A-UI-03878-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARY GREELEY MEDICAL CENTER

Employer

**OC: 03/11/07 R: 02
Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Jannie Heath, filed an appeal from a decision dated April 6, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 30, 2007. The claimant participated on her own behalf. The employer, Mary Greeley Medical Center (Greeley), participated by Manager of Employee Relations Betsy Schoeller, Clinical Supervisor Amy McDonough and Recruitment Manager Megan Wolf.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Jannie Health began employment at Greeley on January 14, 2004, as a regular part-time patient technician. She went to full-time status on July 11, 2004, and on October 20, 2006, the duties of monitor technician were added to her responsibilities.

On February 22, 2007, the claimant's personal physician restricted her to "no lifting of patients," and this was modified on March 14, 2007, to no lifting more than 40 pounds. The employer complied with those restrictions. Ms. Heath was questioned by the employer's representatives and she stated her back problems were not the result of a work-related injury or condition.

Around the beginning of March 2007, Ms. Heath informed the employer she was no longer able to perform the essential duties of a patient technician because of her back problems. She was taken off the schedule for those duties, maintained her part-time duties as monitor technician, and provided with information about applying for other jobs.

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(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant essentially quit her job as a patient technician when she informed the employer she was no longer able to perform the essential functions of the job. Her current contract of hire is as a part-time monitor technician, and she continues in that capacity at the current time. She is therefore continuing to be employed as in the contract of hire and is not able and available for work under the provisions of the above Administrative Code section.

DECISION:

The representative's decision of April 6, 2007, reference 01, is affirmed. Jannie Heath is not eligible for benefits as she is not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs