

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEX WELLENBRING**  
Claimant

**APPEAL NO. 12A-UI-00757-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COUNTY FAIR ASSOCIATION**  
Employer

**OC: 12/04/11  
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 13, 2012, reference 03, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on February 17, 2012. Claimant participated personally. Employer responded to the hearing notice but did not participate at the time of hearing.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant is an apprentice in an electrical program. Wage records reflect that claimant works full-time for an employer called A & G Electric Company in a full-time capacity. He also works part-time and as-needed for the Dubuque County Fair Association. Claimant was sent for department-approved training during the week December 4, 2011.

**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".

The fact-finding decision held that the claimant was disqualified under Iowa Administrative Code 871 section 24.22(2)(i)(3). This provision disallows "on-call workers" from drawing benefits under the able and available provisions of the Iowa Code.

There are two problems with this denial. First, the provision cited applies only to workers "whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work ..." Id. In this case, the vast majority of claimant's base period wages were in regular full-time employment, not on-call work.

Second, this situation is more accurately characterized as a full-time worker who worked a part-time job when it was available. In fact, the undersigned is not convinced that claimant's employment for the Dubuque County Fair Association was truly "on-call" employment. It is, more accurately, a part-time supplemental job.

Claimant's failure to work in his part-time supplemental job does not disqualify him from receiving benefits from his regular, full-time job while on department-approved training.

**DECISION:**

The decision of the representative dated January 13, 2012, reference 03, is reversed. Claimant is eligible to receive unemployment insurance benefits effective December 4, 2011, provided claimant meets all other eligibility requirements.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/kjw