

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARY K HINDMAN**  
Claimant

**EXPRESS SERVICES INC**  
Employer

**APPEAL 21A-UI-09330-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (3)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-call Wage Credits

**STATEMENT OF THE CASE:**

On March 29, 2021, the claimant, Mary K. Hindman, filed an appeal from the March 18, 2021 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at the same hours and wages and was not available for work effective January 24, 2021. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 on Thursday, June 17, 2021. The claimant, Mary K. Hindman, participated. The employer, Express Services, Inc., did not register a participant for the hearing and did not participate. No exhibits were offered or admitted. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant able to and available for work?  
Is the claimant an on-call worker?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is currently employed with employer Express Services as an on-call temperature check employee. Claimant does not have a consistent schedule in this position. She only fills in for other employees when they need to be absent from work. Claimant has also worked for Express Services helping with an off-site voting station.

Claimant has wages in her base period of employment from two employers, Cedar Memorial and Nelson Manufacturing. Claimant worked for Cedar Memorial as an on-call hostess for grieving families. She worked for Nelson Manufacturing setting up and staffing trade shows as they occurred.

Claimant's wage record shows fluctuating wages from both base period employers. Claimant's wages with Cedar Memorial fluctuated from \$268.00 in her lowest quarter to \$479.00 in her

highest quarter. Claimant's wages with Nelson Manufacturing fluctuated from \$0.00 in her lowest quarter to \$5,635.00 in her highest quarter.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that claimant is an on-call employee and is not eligible for unemployment insurance benefits.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

Iowa Admin. Code r. 871-24.22(2)i(1) and (3) provide:

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.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(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.

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.

(a) 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.

(b) 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.

(c) 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.

Since October 2020, claimant has been employed with Express Services as a temporary, as-needed employee. When an individual is hired to work on-call or "as needed," the implied agreement is that the employee will only work when work is available and that work will not be regularly available. Thus, any diminution in hours is directly related to the on-call or "as needed" status when work is not available as no regular hours were guaranteed.

Additionally, the testimony in the record establishes that claimant is a substitute worker as defined by rule 24.22(2)i(1) of Chapter 871 of the Iowa Administrative Code. Claimant appears to have only on-call wages in her base period, and she is holding herself available for on-call work only. Claimant's wage record shows a fluctuation of wages consistent with on-call employment, and claimant's testimony shows she is only seeking and interested in working on-call jobs. Therefore, the administrative law judge finds claimant is not available for work. Benefits are withheld.

**DECISION:**

The March 29, 2021 (reference 02) unemployment insurance decision is modified in favor of the respondent/employer. Claimant is unavailable for work effective March 29, 2020. Benefits are withheld.



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Elizabeth A. Johnson  
Administrative Law Judge  
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June 29, 2021  
Decision Dated and Mailed

lj/ol