

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KEVIN WARD**

Claimant

**APPEAL 20A-UI-14123-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**

Employer

**OC: 01/26/20**

**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.22(2)i – On-call and Substitute Workers

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 29, 2020, (reference 03) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2021. Claimant participated. The employer did not participate. Exhibit A was entered into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is the claimant partially unemployed and available for work, and if so, is the employer's account liable for potential charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked as a preload worker for the employer, UPS, from June 2020 to July 17, 2020, when he was laid off. The claimant's immediate supervisor was Preload Supervisor Austin Welch. His hourly wage was \$14 per hour. The claimant received approximately 20 to 25 hours per work per week. The claimant was not given a full week's schedule to work. Prior to each shift, the claimant was instructed report for work the following work day. After reporting to work, the claimant did not have a set number of hours in which he would work. The claimant essentially worked until the tasks for that day were completed.

Beginning on July 17, 2020, the employer stopped assigning the claimant work.

On August 25, 2020, claimant received a letter from the employer stating he was going to be removed from payroll on August 28, 2020.

Prior to working for UPS, the claimant worked for Transport Loading Service for his entire base period spanning from fourth quarter of 2018 to the third quarter of 2019.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant's availability for work with this employer is moot. The administrative law judge further concludes he cannot be granted benefits because he was not guaranteed work by the employer and he does not have eligible wages in his base period from which to draw.

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".

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 Admin. Code r. 871-24.22(2)/(1) provides:

**Benefit 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.

*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.

Iowa Admin. Code r. 871-24.22(2)(3) provides:

**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.*

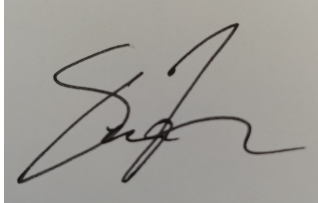
**(3)** An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not 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.

Because claimant was hired to work only on-call or as-needed, he is not considered unemployed within the meaning of the law as it pertains to this employer. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any reduction in hours is directly related to the on-call status as no regular hours are guaranteed. The claimant contends he was not on call when he started with the employer. However, he conceded his hours were not set ahead of time and he was to report on the next working day to get more information regarding his hours. As a result, the claimant cannot be considered able and available for work or totally unemployed during the time in which the employer did not assign him work. The employer is also not subject to charge.

There are other wages in the claimant's base period, but the claimant was disqualified from receipt of those benefits because he was discharged. The claimant did not make ten times his weekly benefit amount while working for this employer. As a result, the employer in the claimant's base period cannot be charged. Benefits are denied.

**DECISION:**

The October 29, 2020, (reference 03) unemployment insurance decision is affirmed. The claimant's on-call status renders availability for this employment moot. The claimant does have other wages in his base period, but he has not earned ten times his weekly benefit amount since being disqualified for these wages. Benefits are denied.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
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Fax (515) 725-9067

February 4, 2021  
Decision Dated and Mailed

smn/kmj