

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLIE TAYLOR JR
Claimant

APPEAL NO: 08A-UI-09141-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMCAST SPECTACOR LP ET AL
GLOBAL SPECTRUM LP**
Employer

OC: 08/17/08 R: 02
Claimant: Appellant (3/R)

Section 96.4-3 – Able and Available
871 IAC 24.22-2-i(3) – On-call Workers

STATEMENT OF THE CASE:

Charlie Taylor, Jr. (claimant) appealed a representative's October 3, 2008 decision (reference 02) that concluded he was not "temporarily unemployed" in conjunction with his employment with Comcast Spectacor L.P. / Global Spectrum L.P. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2008. The claimant participated in the hearing. Barbara Craig appeared on the employer's behalf and presented testimony from one other witness, Brian Puza. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

Since February 2, 2006 the claimant has worked as an on-call guest services attendant for theatrical events and other types of exhibitions and performances at the Iowa Event Center, for which the employer provides services. The claimant works for the employer solely on an as-needed on-call basis. When an event necessitates the use of attendants, the event coordinator contacts potential attendants from a list. The need for attendants is generally greater during the winter months and less in the summer months. Since June 1 through August 15 the claimant worked 18.25 hours; he most recently worked 7.2 hours on October 5.

The claimant established a claim for unemployment insurance benefits effective August 17, 2008. His base period began April 1, 2008 and ended March 31, 2008. During this period, the claimant had wages from the employer, as well as from the Golf Foundation of Iowa. The wages from the Golf Foundation was also for work done on a same on-call basis, assisting with summer children's programs as needed. There were no wages from any other employers during the base period.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, In order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3.

871 IAC 24.22-2-i(3) provides in pertinent part:

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 . . .

The claimant's base period wages consist exclusively of credits from on-call work. The claimant is therefore considered unavailable for work and ineligible for unemployment insurance benefits.

An issue as to whether the claimant was overpaid for benefits he has receive to date arose as a consequence of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's October 3, 2008 decision (reference 02) is affirmed as modified. The claimant's base period consists exclusively of on-call wage credits; he is considered unavailable for work effective August 17, 2008, and benefits are denied. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs