

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIELLE R GADE

Claimant

APPEAL 16A-UI-08612-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARTELS LUTHERAN HOME INC

Employer

OC: 06/26/16

Claimant: Respondent (4R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the July 29, 2016, (reference 06) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2016. The claimant participated personally. The employer participated through Veronica Shea, HR generalist. Department exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant's employment with this employer as an on-call basis? Is this employer's account liable for potential charges?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant is currently in school full-time and searching for part-time work only. The claimant was employed for this employer as an on-call or as-needed CNA until March 22, 2016. No certain number of hours was guaranteed due to the nature of the business. The claimant has only part-time employment in the base period and it is unclear from the record as to whether it is also for on-call work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's availability for work is moot.

Iowa Code § 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 Admin. Code r. 871-24.22(2)i(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.

Because the claimant was hired to work only on-call or as-needed, she 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. However, since there are other wages in the base period, the monetary eligibility of the claimant needs to be examined to determine eligibility (including whether the claimant is monetarily eligible for benefits) based upon the other employment. Accordingly, benefits may be allowed if the claimant is otherwise monetarily eligible and the account of this employer shall not be charged.

DECISION:

The July 29, 2016, (reference 06) unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot. Benefits may be allowed if the claimant is otherwise monetarily eligible and the account of Bartels Lutheran Home Inc. (account number 104589-000) shall not be charged.

REMAND:

The issue of monetary eligibility of the claimant as delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs