

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M SCOTT
Claimant

APPEAL NO. 09A-UI-19144-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DUBUQUE COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 11/15/09
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work – On Call Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 16, 2009 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 29, 2010. Claimant participated. Employer participated through Benefits Projects Coordinator Amy Van Der Meulen and Food Service Director Jolene Franks.

ISSUE:

The issue is whether claimant is able to and available for work or if she is considered an on-call employee and is not considered unemployed.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant remains employed as an on-call or as-needed substitute food service worker as she has since October 2006. Her on-call hours were different from the 2008-09 to the 2009-10 school year because two individuals who had extended periods of absence returned to work. Claimant had no other regular employment in the base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered unemployed.

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".

871 IAC 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.

871 IAC 24.22(2)i(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 § 96.19(9)"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, she is not considered to be unemployed within the meaning of the law. 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 diminution in hours is directly related to the on-call availability when work is available as no regular hours were guaranteed. Accordingly, benefits are denied.

DECISION:

The December 16, 2009 (reference 02) decision is affirmed. The claimant is not considered unemployed because of her on-call employment status. Benefits are denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css