

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NIGHLAND B NICHOLS**

Claimant

**APPEAL NO. 12A-UI-04903-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROWNS CREW CAR OF WYOMING INC**

Employer

**OC: 03/25/12**

**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
Section 96.4-3 – Same Wages and Hours  
871 IAC 24.22(2)I(3) –On Call Workers

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated April 25, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 22, 2012. Claimant participated. The employer participated by Johniece Dublin, the employee relations specialist. The record consists of the testimony of Highland Nichols and the testimony of Johniece Dublin.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides transportation services for railroad workers. The claimant was hired on August 27, 2008, to work as a driver. The claimant is an on-call employee and has never been guaranteed a certain number of hours per week. The claimant did agree to be available for the employer when called. The claimant is still an employee of the employer.

The claimant established a claim for benefits with an original claim date of March 25, 2012. The claimant's base period wages are all from this employer.

**REASONING AND CONCLUSIONS OF LAW:**

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 section 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.

Iowa law states that if an employee is an on-call employee and all wages in the base period come from on call employment, then the employee is not considered an unemployed individual. The evidence established that the claimant is an on-call employee, that is, he is only called for work when work is available. The claimant did agree to be available when called and he considers himself to be "working" even though he is not driving and not being paid. The administrative law judge understands the claimant's frustration about how few hours he has worked this year. But the law is clear that he is not considered an unemployed individual. Benefits are denied.

#### **DECISION:**

The decision of the representative dated April 25, 2012, reference 01, is affirmed. The claimant is not available for work within the meaning of law and benefits are denied as of March 25, 2012.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css