

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELE M JOBGEN
Claimant

APPEAL 17A-UI-01721-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWISS COLONY DATA CENTER
Employer

**OC: 01/08/17
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-23.43(4)a – Supplemental Employment
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-call Wage Credits

STATEMENT OF THE CASE:

The employer filed an appeal from the February 9, 2017, (reference 01) 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 March 8, 2017. Claimant participated. Employer participated through human resources coordinator Mitch Daubert. Human resources coordinator Emily Salatche observed. Employer's Exhibit 1 was received.

ISSUES:

Is the claimant able to work and available for work effective January 8, 2017?
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: Claimant is employed as a customer service representative at \$11.30 per hour for Swiss Colony Data Center, a base period employer from Wisconsin, under the same terms and conditions as contemplated at hire in October 2016. Claimant lives in Galena, Illinois, and works in Dickeyville, Wisconsin, about 31 miles one-way. No hours are guaranteed to employees as work varies depending on call volume, which is highest around the fall and winter holidays. Employees are given the option of stating available days and hours of work. Claimant gave full-time availability. Her last day of work was January 4, 2017. Claimant opted on January 2, 2017, to take a voluntary layoff and return in the fall because the hours were reduced due to low call volume. If claimant did not opt to take the voluntary layoff, her hours, and those of all other employees would be reduced according to call demand. Claimant had been working approximately full-time hours during the fall and early winter except for a number of weeks when she was ill. During the two weeks ending December 24, 2016, claimant missed 32 and 29 hours of available work, respectively. She worked all available hours during the two week-ending January 7, 2017. She asked her supervisor about working fewer days with longer hours but the amount of hours available each day depends upon call volume so there was no

guarantee of a minimum number of hours available on any given day, except that the employer pays a two-hour minimum for reporting to work. Claimant found and started a full-time job during the week of February 5, 2017. She plans to return to Swiss Colony Data Center as a supplemental employee when hours pick up in the fall and she is recalled to work as available.

Claimant has other potentially qualifying wages in the base period history with an Iowa employer. The claim is not currently designated as a combined wage claim with Wisconsin.

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.

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 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.

Iowa Admin. Code r. 871-24.22(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(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, 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. Thus any reduction in hours is directly related to the on-call status as no regular hours are guaranteed. However, since there are other wages in the base period, the monetary eligibility of the claimant needs to be examined to determine eligibility based upon the other employment and the lack of regular work with this on-call employer is moot. Accordingly, benefits may be allowed if the claimant is otherwise eligible and chargeability of the account of Swiss Colony shall be determined by the State of Wisconsin.

DECISION:

The February 9, 2017, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot as she has other qualifying wages in the base period. Benefits are allowed if she is otherwise monetarily eligible and the chargeability of the Swiss Colony tax account is determined by the State of Wisconsin.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs