

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PETER J SCHUELLER
Claimant

APPEAL 21A-UI-03626-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINTZLE CONSTRUCTION INC
Employer

**OC: 05/10/20
Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On January 23, 2021, Peter J. Schueller (claimant/appellant) filed an appeal from the January 13, 2021, reference 01, unemployment insurance decision that concluded he was still employed at the same wages and hours and not considered partially unemployed. After due notice was issued, a telephone hearing was held on March 30, 2021, and consolidated with the hearing for appeal 21A-UI-03627-SC-T. The claimant participated personally. The employer participated through Sarah Kintzle, Vice-President/Co-Owner. The Employer's Exhibit 1 was admitted into the record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to work, available for work, and actively and earnestly seeking work the effective May 10, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for the employer since March 2017, as an on-call, seasonal Applicator. He filed the claim for benefits effective May 10, 2020, and this employer is the only employer in his base period. The claimant works when work is available, and he is paid by the number of gallons he applies to farms. He was never guaranteed a certain number of hours. The claimant was offered odd jobs at the shop after the regular spring season ended, but he also worked full-time on his family farm and his father was ill, so he did not accept any of the work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not unemployed as defined by Iowa law, benefits are denied.

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 Code section 96.19(38) provides:

Definitions.

38. Total and partial unemployment

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

Iowa Admin. Code r. 871-24.22(2)i provides, in relevant part:

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. Since, under unemployment insurance laws, it is the

availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.19(38). On-call work, by its very nature, is not always available and the employee understand they will not always have work available to them. In this case, the claimant's base period wages consist solely of on-call work. Therefore, he cannot be considered unemployed under Iowa law and he is not eligible for unemployment insurance benefits.

DECISION:

The January 13, 2021, reference 01, unemployment insurance decision is modified with no change in effect. The claimant is not unemployed under Iowa law and is not eligible for unemployment insurance benefits. Benefits are denied.



Stephanie R. Callahan
Administrative Law Judge

April 12, 2021
Decision Dated and Mailed

src/scn