

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIMBERLY S STEEN**  
Claimant

**FBG SERVICE CORPORATION**  
Employer

**APPEAL 16A-UI-08037-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/19/16**  
**Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)b – Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 12, 2016, (reference 02) unemployment insurance decision that allowed benefits beginning June 19, 2016. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2016. Claimant did not participate. Employer participated through hearing representative Jacqueline Jones and area manager Linda Smims. Joel Pederson registered on behalf of the employer, but did not answer when contacted at the number provided.

**ISSUES:**

Is the claimant able to and available for work?

Is the claimant partially unemployed and available for work?

If so, is the 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: Claimant was hired by the employer on August 6, 2007 as a full-time cleaning specialist. Claimant worked year round, Monday through Friday, from 2:00 p.m. to 10:30 p.m.

On March 11, 2016, claimant notified Ms. Simms that she had accepted a full-time position with Cardinal School in the cafeteria and was going to move from a full-time position with the employer to an on-call position with the employer. Claimant's schedule with Cardinal School was Monday through Friday from 8:00 a.m. to 4:30 p.m. Claimant started her full-time position with Cardinal School on March 14, 2016. When claimant left, the employer had to hire another employee to take her full-time position.

The agreement between claimant and the employer when she went from a full-time position to an on-call position was that the only hours that would be available were if an employee calls in sick, takes vacation, or is otherwise unavailable. The employer did not guarantee claimant any hours when she went to an on-call basis.

Claimant's pay rate with the employer did not change since she went to an on-call basis. Claimant is the only employee with the employer that is on an on-call basis. There was work available for claimant with the employer as a cleaning specialist position, full-time, had claimant not taken the cafeteria position with Cardinal School. Claimant is going back to the cafeteria position this fall with Cardinal School. Claimant was not available to work her full-time position with the employer and her full-time at Cardinal School because the hours conflicted. The only hours the employer has available for on-call work are when an employee calls in sick, takes vacation, or is otherwise unavailable.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that claimant is not considered to be 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".

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:

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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.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Claimant was originally hired to work full-time for the employer, but voluntarily changed her status to on-call position with the employer effective March 14, 2016, when she started her new full-time employment with Cardinal School. The employer did not guarantee claimant any hours when she went to on-call. Because claimant works only on-call or as needed for the employer and currently works for Cardinal School full-time, 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 status when work is not available as no regular hours were guaranteed. Accordingly, benefits are denied.

**DECISION:**

The July 12, 2016, (reference 02) decision is reversed. Claimant is not considered unemployed because of her on-call employment status. Benefits are denied.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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