

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MICHAEL S JONES**  
Claimant

**APPEAL NO. 17A-UI-10812-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VENUWORKS OF CEDAR RAPIDS LLC**  
Employer

**OC: 01/01/17**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.23(26) – Part-Time Worker – Able and Available

**STATEMENT OF THE CASE:**

Michael Jones (claimant) appealed a representative's October 12, 2017, decision (reference 08) that concluded he was not eligible to receive unemployment insurance benefits because he still worked for Venuworks of Cedar Rapids (employer) for the same hours and wages as in his original contract for hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 9, 2017. The claimant participated personally and through Jeff Smith, business agent for Local 191. The employer participated by Casey McKinstrey, Human Resources Specialist.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable for work. .

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 28, 1989, as an on-call stage hand. The employer and the claimant agreed when he was hired that there would be no guarantee of hours. He has been working ever since whenever hours are available. He last worked on October 21, 2017. All the claimant's hours in his base period are for on-call work.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Code section 96.19(38) provides:

"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.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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.

The claimant was hired as a part-time worker and is still working part-time for the employer. There has been no change to his hours. All of the claimant's wages during his base period come from on-call employment. Therefore, the claimant is considered to be unavailable for work.

**DECISION:**

The representative's October 12, 2017, decision (reference 08) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs