

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KABEH G GABRIEL
Claimant

MOSAIC
Employer

APPEAL 20A-UI-11887-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/20
Claimant: Appellant (1/R)

871 IAC 24.24.22(2)i – On Call Worker
Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

Kabeh Gabriel (claimant) appealed a representative's September 21, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits based on employment with Mosaic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 19, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the claimant is disqualified for being an on-call worker. .

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from February 7, 2016, to July 4, 2020. In December 2019, she became an on-call direct support assistant. The claimant worked whenever hours were available. After July 4, 2020, there were no hours available.

The claimant filed for unemployment insurance benefits with an effective date of July 5, 2020. Her weekly benefit amount was determined to be \$493.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after July 5, 2020.

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.

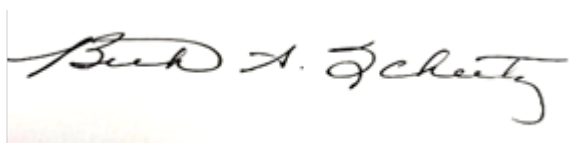
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was hired in December 2019, as an on-call worker. She was still working on-call for the employer until her separation. There has been no change to her hours while she was employed. Therefore, the claimant is considered to be unavailable for work.

The claimant's separation from employment is remanded for determination.

DECISION:

The representative's September 21, 2020, decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits for being unavailable for work.

The claimant's separation from employment is remanded for determination.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

November 30, 2020
Decision Dated and Mailed

bas/scn