

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CYNTHIA D COX  
2217 CAMERON DR  
CLINTON IA 52732

DATA DIMENSIONS CORP  
PO BOX 1465  
JANESVILLE WI 53547

Appeal Number: 04A-UI-02411-HT  
OC: 02/01/04 R: 04  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer, Data Dimensions Corporation (DDC), filed an appeal from a decision dated March 2, 2004, reference 01. The decision allowed benefits to the claimant, Cynthia Cox. After due notice was issued a hearing was held by telephone conference call on March 24, 2004. The claimant participated on her own behalf. The employer participated by Human Resources Administrator Jean Stefano.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Cynthia Cox began working for DDC on August 15,

1994. During her tenure she changed status between being on call and being part time a few times. Her last change was to an on-call status on August 3, 2003.

On-call employees are required to work a minimum of 15 hours per week, a minimum of two hours per day during times when the workload is high. They are given yearly reviews, incentives, must attend meetings and training sessions, and meet other expectations. During the course of her tenure as an on-call employee, Ms. Cox was regularly scheduled for the minimum of 15 hours per week. She would be notified during work hours the week before when she would be expected to work the following week. Although she was never guaranteed any minimum number of hours per week, there were only a few weeks during the last ten years that she did not work at all.

Since February 2004, the workload had decreased to the point where no work was available and she filed a claim with an effective date of February 1, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. The judge conclude she is.

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".

The claimant worked steadily and regularly for DDC during the past ten years. The amount of work available to her has decreased, but she is still available to work the same hours she had during the course of her employment.

The administrative law judge cannot consider this employment situation to be the type of on-call work usually encompassed in that description. Ms. Cox regularly worked on a weekly basis and was not summoned only on occasion for special projects or events. She must meet the same expectations as a regular employee and was not considered to be a "fill in" for vacations or other absences of full-time workers. She has been laid off due to lack of work but remains able and available to resume her duties.

#### DECISION:

The representative's decision of March 2, 2004, reference 01, is affirmed. Cynthia Cox is able and available for work and is eligible to receive benefits.

bgh/b