

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT KREMER
Claimant

APPEAL NO: 11A-UI-10375-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE COMMUNITY SCHOOL DIST
Employer

OC: 01/02/11
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Able and Available for Work
871 IAC 24.22(2)I(3) - On Call Workers

STATEMENT OF THE CASE:

Scott Kremer (claimant) appealed an unemployment insurance decision dated July 29, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits as of January 2, 2011 because he was still employed with the Riverside Community School District (employer) in the same capacity as in his original contract of hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2011. The claimant participated in the hearing. The employer participated through Tim Blum, Business Manager and Marilyn Mickey, Administrative Assistant and District Board Secretary. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available for work and whether the claimant is working at the same hours and wages as in his original contract of hire with this employer.

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 as an on-call substitute teacher on March 1, 2008 and was placed on the school district's list of substitute teachers. An employee remains on the substitute teacher list unless he advises the employer he is no longer available to substitute teach. The claimant testified that as part of his normal job search, he contacted the employer in 2011 to indicate that he is available to substitute teach. Consequently, the employer considers the claimant to be available as a substitute teacher and he remains on the substitute teacher list. The claimant last worked for this employer in December 2009 and his base period consists solely of wages earned as an on-call substitute teacher.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available and whether he is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

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".

871 IAC 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 § 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant is not limiting his availability to work but wages earned in his base period consist solely of wages earned in on-call employment. Because he was hired to work only on call or as needed, he is not considered to be unemployed within the meaning of the law with respect to substitute teaching. 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. The claimant is employed to the same extent he was during the base period of his claim in which he earned all of his wage credits and benefits are therefore denied.

DECISION:

The unemployment insurance decision dated July 29, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, effective January 2, 2011 as he is still employed to the same extent as he was during the base period of his claim.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css