

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DARRYL L MOSLEY**  
Claimant

**JACK VINCENT JR**  
Employer

**APPEAL 18A-UI-11374-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/21/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2)i – Able & Available – On-Call Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 19, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed in his on-call job in the same capacity as his original contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held on Thursday, December 6, 2018. The claimant, Darryl L. Mosley, participated. The employer, Jack Vincent, Jr., participated through Jack Vincent, Jr., Owner. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is claimant considered to be fully or partially unemployed effective October 21, 2018?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as an on-call laborer, beginning October 12, 2017. Claimant performs a variety of seasonal labor for this employer. In the warmer months, claimant mows, paints, and completes projects around the employer's shop. In the winter, claimant does snow removal. Claimant earned \$12.00 per hour for most tasks, and he earned \$20.00 per hour for snow removal. Claimant last reported to work on September 27, 2018. He was next called for work on November 17, 2018, but claimant did not go to work that day due to a dispute about how the employer planned to pay him. While the employer intended to pay him through a check at the end of the pay period as was standard, claimant wanted to be paid that day in cash. Vincent considers claimant to be an active on-call employee, and he intends to call him when there is work to be completed.

The administrative record shows that claimant earned wages in three of the four quarters of his base period. These quarters all indicate claimant was working the on-call schedule that the

employer described. Claimant earned \$2,304.00 in the fourth quarter of 2017. This breaks down to 14.8 hours per week if claimant was earning \$12.00 per hour. Claimant earned \$1,482.00 in the first quarter of 2018. This breaks down to 9.5 hours per week if claimant was earning \$12.00 per hour. Claimant earned \$1,116.00 in the second quarter of 2018. This breaks down to 7.2 hours per week if claimant was earning \$12.00 per hour.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is not eligible for unemployment insurance benefits.

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".

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.

(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.

(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.

...

(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.

Because claimant was hired to work only on-call or as needed, and the wage history consists of only on-call wages, he 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 November 19, 2018 (reference 01) unemployment insurance decision is affirmed. The claimant is not considered unemployed because of his on-call employment status in the wage credit history. Benefits are denied.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn