

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA M TRENARY
Claimant

APPEAL 21A-UI-14064-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOUNDATION 2 INC
Employer

**OC: 03/28/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers

STATEMENT OF THE CASE:

On June 14, 2021, the claimant/appellant filed an appeal from the June 2, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant not meeting the availability requirements of the law. The parties were properly notified about the hearing. A telephone hearing was held on August 16, 2021. Claimant participated at the hearing. Employer did not register a number to participate in the hearing prior to the hearing and therefore did not participate in the hearing. Administrative notice was taken of claimant's unemployment benefits records.

ISSUES:

Is the claimant able to and available for work?

Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer in October 2012 as a mobile crisis outreach counselor. Claimant is on-call 24 hours a day 7 days a week, 365 days a year. However, claimant is only paid if she signs up for a shift to be on-call and if she gets dispatched. Claimant is required to sign up for a minimum of three 6 hour shifts per pay period. Claimant is paid bi-weekly. Claimant is paid \$2.50 per hour to be on-call. Claimant does not work for any other employer.

Claimant testified that from March 19, 2021-April 2, 2021, she worked 37 hours on call and 18 hours of dispatch. On April 3, 2021 through April 16, 2021 she worked 43 hours on call and 18 hours of dispatch. From April 17, 2021 through April 30, 2021, she was on call 74 hours and dispatched 12 hours. May 1, 2021 through May 14, 2021, she was on call 39 hours and dispatched 4 hours. May 15, 2021, through May 28, 2021, claimant was on call 49 hours and dispatched 7 hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Code section 96.1A(37) 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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as-needed, she is not considered unemployed within the meaning of the law as it pertains to this employer. 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 reduction in hours is directly related to the on-call status as no regular hours are guaranteed. Accordingly, benefits are denied.

DECISION:

The June 2, 2021 (reference 01) decision is affirmed. Claimant was working on call and was not guaranteed work. She is therefore not considered unemployed pursuant to Iowa law. Benefits are denied effective March 28, 2021.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

August 19, 2021
Decision Dated and Mailed

cs/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.