

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRADLEY A FINN**  
Claimant

**APPEAL 18A-UI-08093-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VENUWORKS OF CEDAR RAPIDS LLC**  
Employer

**OC: 07/08/18  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 27, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 6, 2018. Claimant participated personally and through business representative Jeff Smith. Employer participated through human resource specialist Mitchell Davis and director of events and operations Scott Piquard. Casey McKinstrey and Trish Nissen observed. Claimant's Exhibit A was received.

**ISSUES:**

Is claimant considered to be fully or partially unemployed?  
Is claimant still employed at the same hours and wages?  
Is the claimant able to and available for work?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired to work on-call or as needed when work was available. He does not have other regular employment in the base period that would qualify him to receive benefits. Claimant remains on employer's on-call list. Claimant believes employer is violating a collective bargaining agreement by offering work to less senior employees before offering work to claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be 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.

Because claimant was hired to work only on-call or as needed, and the qualifying wage history consists of 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 as no regular hours were guaranteed. Any concern claimant has in regard to whether employer is violating a collective bargaining agreement

should be addressed with his union. That information does not determine whether claimant is eligible to receive unemployment insurance benefits.

Since the claimant is not considered to be unemployed, the other issues on the hearing notice are moot and will not be discussed further in this decision.

**DECISION:**

The July 27, 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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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

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