

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL R MAERTZ
Claimant

APPEAL 21A-UI-17238-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENTERPRISE RENT A CAR COMPANY
Employer

**OC: 05/02/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)i(1) – Substitute Workers
Iowa Admin. Code r. 871-24.22(2)i(3) – On-Call Wage Credits

STATEMENT OF THE CASE:

On August 5, 2021, claimant Michael R. Maertz filed an appeal from the August 3, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that the claimant was still employed at the same hours and wages and was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Wednesday, September 29, 2021. The claimant, Michael R. Maertz, participated. The employer, Enterprise Rent-A-Car Company, did not register a telephone number at which to be reached and did not participate in the hearing. No exhibits were offered or admitted into the record.

ISSUES:

Is the claimant able to work and available for work?
Is the claimant totally or partially unemployed?
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 has worked for Enterprise Rent-A-Car Company since 2012. Throughout his employment, claimant has worked part-time hours for the employer as a driver. Enterprise Rent-A-Car Company is claimant's sole employer.

Claimant is an on-call employee for the employer. He receives a telephone call by 6:00 p.m. that informs him if he is working the following day. Some employees have restricted availability and only accept shifts on particular days of the week. Claimant, however, accepts work from the employer every day of the week. Occasionally, claimant will know about a job assignment in advance. However, he will not know whether he has the assignment for certain until he receives the confirmation call the night before the assignment is scheduled to commence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is an on-call worker and is not eligible for unemployment insurance benefits.

Iowa Code § 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 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...

Iowa Admin. Code r. 871-24.22(2)(1) and (3) provide:

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.

(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.

In this case, claimant testified that he has worked his entire employment with Enterprise Rent-A-Car Company as an on-call employee. Claimant does not find out when he is working until the night before a shift. This has been his scheduling arrangement since the onset of his employment. 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 drop or variation in claimant's 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 August 3, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant is an on-call worker and is not eligible for unemployment insurance benefits. Therefore, benefits are denied.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 01, 2021
Decision Dated and Mailed

lj/ol