

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARC MUEHLEIP**  
Claimant

**VENUWORKS OF CEDAR RAPIDS LLC**  
Employer

**APPEAL 21A-UI-12985-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21  
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment  
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment  
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the May 21, 2021 (reference 02) unemployment insurance decision that found claimant was eligible for unemployment benefits effective March 14, 2021 as he was still employed by the employer but not working the same pattern as in his base period of employment. The parties were properly notified of the hearing. A telephone hearing was held on August 3, 2021. The claimant participated personally. The employer participated through witness Sean Meloy. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant eligible for total, partial, or temporary unemployment benefits?  
Is claimant employed for the same hours and wages?  
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 works for this employer as an on-call worker. He is a stage hand and works different events that the employer has available to him. The events can range from one day to multiple days; however, the claimant does not have a guaranteed schedule or guaranteed number of hours he will work each week. Work is provided to him as business needs allow and as the claimant's availability allows him to work. Claimant worked for the employer in the fourth quarter of 2019 for multiple one-day jobs. Claimant worked for the employer on-call for a two-day job on January 21, 2020 and January 22, 2020. Claimant worked for the employer on-call for a one-day job on May 21, 2021. This employer posts the open jobs with the union and the union will send an available worker.

Claimant is currently working an on-call job with another employer in Dyersville, Iowa. That job began on July 14, 2021.

Claimant filed an original claim for unemployment insurance benefits effective March 14, 2021. His base period includes the fourth quarter of 2019 through the third quarter of 2020. All employers listed in his base period include on-call work only.

### **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) (previously Iowa Code § 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 96.1A(37)"a" and "b."** An individual who is willing to accept only on-call work is not considered to be available for work.

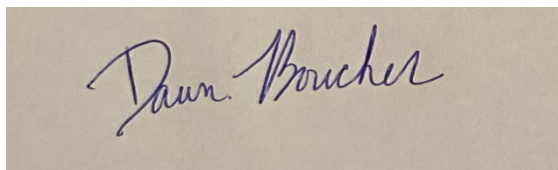
(emphasis added).

The legislature has provided a specific rule that applies to on-call workers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. 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 sporadic availability of available work, as no regular hours are guaranteed. Claimant has only on-call wages in the base period. Accordingly, the claimant is not considered an unemployed individual effective March 14, 2021, and unemployment insurance benefits funded by the State of Iowa are denied.

#### DECISION:

The May 21, 2021 (reference 02) decision is reversed. Claimant is an on-call worker and is not guaranteed work. He is therefore not considered an unemployed individual pursuant to Iowa law. Benefits are denied effective March 14, 2021.

*This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.*



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Dawn Boucher  
Administrative Law Judge

August 9, 2021  
Decision Dated and Mailed

db/scn

**Note to Claimant**

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.