

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GALEN C REDDIN
Claimant

APPEAL NO. 14A-UI-03009-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KIRKWOOD COMMUNITY COLLEGE –
AREA 1**
Employer

OC: 02/09/14
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 7, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on April 10, 2014. Claimant participated. Employer did participate through Sheri Hlavacek, Human Resources Representative.

ISSUE:

Is the claimant still employed at the same hours and wages as at the time of hire?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired as a part-time adjunct instructor used on an as-needed basis for overflow classes when beyond enrollment exceeds what full-time professors can handle. The claimant admits that he was given no guarantee when he was hired that he would teach any particular number of classes in either a semester or an academic year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

871 IAC 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(9)"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, 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 as no regular hours are guaranteed. Accordingly, benefits must be denied. Claimant's remedy is to urge the legislature to alter the applicable rule.

DECISION:

The March 7, 2014, (reference 01) decision is affirmed. The claimant is not considered unemployed because of his on-call employment status. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs