

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHARLES E REITZLER**  
Claimant

**APPEAL 17A-UI-10395-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 01/22/17  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.22(2)i(1) – Benefit Eligibility - Substitute Workers  
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-call Wage Credits

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 5, 2017, (reference 03) unemployment insurance decision that denied benefits based upon not being able to or available for work effective August 27, 2017 (sic). The parties were properly notified about the hearing. A telephone hearing was held on October 30, 2017. Claimant participated. Employer participated through theatre manager Greg Pavilcek.

**ISSUES:**

Is the claimant able to work and available for work effective September 10, 2017?  
Does the claimant meet the definition of being considered partially unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired to work full-time on September 15, 2014. Most recently, the employer reduced hours the two weeks-ending September 23, 2017, and the week-ending October 7, 2017. Claimant took vacation and was ineligible for benefits the week-ending September 30, 2017. The employer considers claimant a full-time employee but treats him and other newer hires as “on-call” and assigns available work based upon seniority. Eventually an “on-call” employee may hold a “bid job” based upon seniority obtained through retirement, attrition, medical leave, and the like.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and available for work effective September 10, 2017.

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".

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(1) provides:

**Benefit 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.

*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.

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.

Simply because an employer labels a position as on-call, does not mean it falls under the definition in Iowa Code Chapter 96. Because the claimant is currently employed less than his history of intended full-time hours, he is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever weeks the employer is not offering full-time hours as contemplated in the contract or terms of hire and as claimant's history has established, it may be liable for benefit charges to its account.

**DECISION:**

The October 5, 2017, (reference 03) unemployment insurance decision is reversed. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs