

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA KRACHT
Claimant

DUNCAN HEIGHTS INC
Employer

APPEAL 20A-UI-09438-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (4-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)i – Able & Available – On-Call Worker
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On August 6, 2020, Kayla Kracht (claimant) filed an appeal from the July 28, 2020, reference 01, unemployment insurance decision that denied benefits effective March 22, 2020, based upon the determination she was still employed in her on-call position with Duncan Heights, Inc. (employer), and she was not able to and available for work. After due notice was issued, a telephone hearing was held on September 23, 2020. The claimant participated personally, and she was represented by Diane Wilson, Attorney. The employer participated through Heidi Hansen, Director; Monica Abbas, Human Resources Director; and, Kelly Eekhoss, Employee Scheduler. The Claimant's Exhibits A through S and the Employer's Exhibits 1 through 10 were admitted without objection

ISSUES:

Is the claimant available for work?
Is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant is employed PRN, or as-needed, with the employer. No certain number of hours is guaranteed, as both the claimant and employer enjoy flexibility in the scheduling. In March, the claimant notified the employer that she had gone to another state and would not be available to work that month. The claimant returned to Iowa at the end of March, but did not notify the employer until June. However, the claimant is still employed with the employer.

The claimant had other regular employment in the base period with Foodfirst Global Restaurant and Amazon.com Services, Inc. The claimant was most recently employed part-time with Bath & Body Works, Inc. during her lag quarter. Whether the claimant's separation from Bath & Body Works, Inc. qualifies her for benefits has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's availability for work with this employer is moot.

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 Admin. Code r. 871-24.22(2)i provides, in relevant part:

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.

(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.

As the claimant was hired to work only on-call or as-needed, she is not considered unemployed within the meaning of the law as it pertains to this employer. 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 reduction in hours is directly related to the on-call status, as no regular hours are guaranteed.

However, since there are other wages in the base period, the monetary eligibility of the claimant needs to be examined to determine eligibility based upon the other employment and the lack of regular work with this on-call employer is moot. Accordingly, benefits may be allowed if the claimant is otherwise monetarily eligible and the account of Duncan Heights, Inc. shall not be charged.

DECISION:

The July 28, 2020, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot as she has other wages in the base period. Benefits may be allowed if claimant is otherwise monetarily eligible and the account of Duncan Heights, Inc. (account number 213258) shall not be charged.

REMAND:

The monetary eligibility and separation qualification of claimant as delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.



Stephanie R. Callahan
Administrative Law Judge

September 28, 2020
Decision Dated and Mailed

src/sam