

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY ADELMUND
Claimant

NCS PEARSON INC
Employer

APPEAL 22A-UI-01233-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/03/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code section 96.1A(37) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-call Wage Credits

STATEMENT OF THE CASE:

On December 10, 2021, the employer filed an appeal from the December 7, 2021, (reference 02) unemployment insurance decision that denied unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 4, 2020. The claimant participated. Employer did not register for the hearing and did not participate. Exhibits A, B, C, and D were received into the record. Official notice was taken of the agency records.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began working for employer as an on-call scoring supervisor in 1993. The work is somewhat seasonal in nature as well. The employer does not guarantee a certain number of hours per week. Instead, the employer sends offers of work to the claimant and he can either accept or reject those offers. The claimant always accepts work offered to him. The claimant's most recent hourly wage was \$21.90.

The claimant filed for benefits on November 14, 2021. At that time, the employer offered him only five hours for that week. The claimant was not working for any other employer at the time.

The claimant does not have insured wage credits from any other employer in his base period.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not eligible for benefits effective November 14, 2021.

Iowa Code section 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 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 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.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

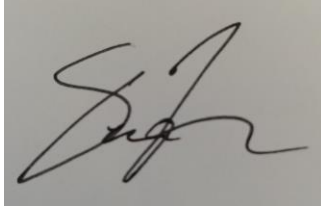
Because claimant agreed to work "on-call" or as needed, and the wage history consists of on-call wages, he is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. Claimant is not eligible for regular unemployment insurance benefits during the weeks employer did not have work available. The claimant has only been willing to accept on-call work and is disqualified from benefits under Iowa Admin. Code r. 871-24.22(2)i(3).

Alternatively, the representative's rationale holds because the claimant is receiving the same on-call arrangement in terms of wages and hours are contemplated in his original contract or hire. This would result in him being denied benefits under Iowa Admin. Code r. 871-24.23(26). Benefits are denied.

The administrative law judge is sympathetic to the confusion of the claimant regarding the emails that he submitted from his employer stating he is eligible. Employers should not be stating an employee is eligible for unemployment benefits because they do not make that determination. The administrative law judge would like to point out again that merely the fact that an employer does not protest a claim does not guarantee eligibility. However, to the extent that the claimant was found eligible in the past, it is likely since the employer did not protest those claims. Many on-call employers do not protest because they would rather that employee be available when called upon.

DECISION:

The December 7, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not considered unemployed under Iowa law or able to and available for work. Regular unemployment insurance benefits funded by the state of Iowa are denied.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is displayed on a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 24, 2022
Decision Dated and Mailed

smn/mh