

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KENNETH J BISHOP**  
Claimant

**STL LOGISTICS LLC**  
Employer

**APPEAL 22A-UI-10898-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2)i(3) – On-Call Workers

**STATEMENT OF THE CASE:**

On April 11, 2022, claimant Kenneth J. Bishop filed an appeal from the April 4, 2022 (reference 01) unemployment insurance decision that denied benefits effective August 23, 2020, due to claimant being unwilling to work in his usual occupation. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Wednesday, June 15, 2022. Appeal numbers 22A-UI-10898-LJ-T, 22A-UI-10899-LJ-T, and 22A-UI-10900-LJ-T were heard together and created one record. The claimant, Kenneth J. Bishop, participated. The employer, STL Logistics, L.L.C., participated through Terry Gray, Manager. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant able to work and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer STL Logistics, L.L.C., as an on-call shag driver in December 2017. Claimant worked full-time hours during the fourth quarter of 2018 and the first quarter of 2019; he worked part-time hours during the second and third quarters of 2019.

Claimant helped out during the summer of 2020, filling in for coworker Bill. He last performed work and was paid insured wages the week of August 23 through August 29, 2020. After that week, claimant stopped working for the employer. The parties agree that claimant had started working with a pallet company in Minnesota and was performing work for that employer instead of for STL Logistics.

Due to his cancer diagnosis and related health issues, claimant was only seeking limited part-time work. He was unable to work more than one or two days each week.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work effective August 23, 2020. Benefits must be withheld.

Iowa Code § 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) 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. ...

Iowa Admin. Code r. 871-24.22(2)i(3) provides:

(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.

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 when work is not available, as no regular hours were guaranteed.

Here, the parties agree that claimant was an on-call worker for the employer. When Gray needed claimant to come to work, he would simply call the claimant and see if the claimant was available to work. This was the arrangement throughout claimant's employment. Because claimant was hired to work only on-call or as needed and claimant's wage history consists entirely of on-call wages, claimant is not considered to be unemployed within the meaning of the law.

Accordingly, benefits are denied. This matter will be remanded to determine eligibility as of the effective date of claimant's claim.

**DECISION:**

The April 4, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to work and available for work effective August 23, 2020. Benefits are denied.

**REMAND:**

This matter is remanded to the Benefits Bureau of Iowa Workforce Development to determine whether claimant was eligible for benefits effective March 29, 2020, as he was an on-call worker.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

June 24, 2022  
Decision Dated and Mailed

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