

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOY WOODARD
Claimant

UNIVERSAL PROTECTION SERVICE LLC
Employer

APPEAL 22A-UI-03141-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/17/21
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Able & Available
Iowa Code § 96.1A(37) – Temporary & Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Admin. Code r. 871-24.22(2)(I) – On Call Worker

STATEMENT OF THE CASE:

On January 13, 2022, the claimant filed an appeal from the January 3, 2022, (reference 02) unemployment insurance decision that denied benefits based on a determination that the claimant was still employed as an on call part-time worker and was not eligible for benefits effective November 28 2021. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2022. Claimant, Joy Woodard, participated and testified. Employer did not call the toll-free number listed on the notice of hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able and available for work and an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 17, 2020. Claimant last worked as an on-call as needed security guard. Claimant was not guaranteed any set hours by the employer and she worked as assignments became available. Claimant last day worked was November 17, 2021, when her assignment ended. Claimant was ill and unable to work from November 17, 2021 through December 12, 2021, and unable to work due to illness. Claimant was separated from employment on December 15, 2021.

The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be an on-call worker and not able to or available for work effective November 28, 2021.

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(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 96.1A(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.

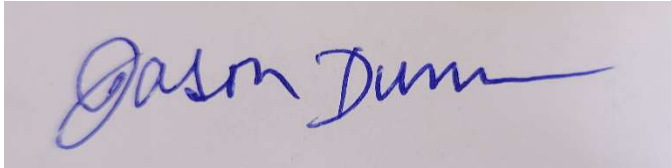
Claimant is on call worker and is not considered to be available for work under Iowa Coe § 96.1A(37). Benefits are denied effective November 28, 2021.

DECISION:

The January 3, 2022, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective November 28, 2021. Benefits are denied.

REMAND

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision if necessary.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 16, 2022
Decision Dated and Mailed

jd/kmj