

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA WALL
Claimant

GREEN BUICK GMC INC
Employer

APPEAL 21R-UI-19367-SN-T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**OC: 01/24/21
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers

STATEMENT OF THE CASE:

The employer/appellant, Green Buick GMC Inc., filed an appeal from the March 24, 2021 (reference 03) unemployment insurance decision that found claimant was eligible for unemployment benefits effective January 24, 2021. A telephone hearing was held on June 17, 2021, at 9:00 a.m. Claimant did not participate. Employer participated through Mandy Andrews, Human Resources and Payroll Manager. The administrative law judge, Adrienne Williamson, issued a decision, 21A-UI-09310-AW-T concluding that the employer's account should not be subject to charge because the claimant had been receiving the same hours and wages as in her original contract of hire.

The claimant, Debra Wall, appealed 21A-UI-09310-AW-T to the Employment Appeal Board (EAB). The EAB remanded the matter down to the lower appeal level because it found the claimant called back in within a reasonable amount of time (41 minutes), but the record was already closed. The parties were properly notified of the hearing. A telephone hearing was held on October 22, 2021. The claimant participated personally. The employer, Green Buick GMC INC, participated through Ms. Andrews. No exhibits were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

On November 4, 2021, this administrative law judge issued an amendment to clarify that his decision reversed the decision of the representative to deny benefits. He also issued the amendment to provide a more complete procedural history.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
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 started working for this employer in 2016 as an on-call worker for their Kids Team Connection. Her job title was child care provider. She worked in that position as her hours were available during schooling and based upon the employer's need until the summer of 2019.

Claimant filed her original claim effective January 24, 2021. Claimant's administrative records establish that her base period for Iowa wages included only the following on-call wages:

	2019/4	2020/1	2020/2	2020/3
Uniparts Olsen Inc	\$3721			
Green Buick GM Inc	\$1425	\$1647	\$850	\$2120

The claimant's weekly benefit amount established for her January 24, 2021 original claim date is \$92.00. The wages the claimant received from Uniparts Olsen Inc. were for full-time work. The claimant also received \$1,221.00 in insured wages from Plymouth Chrysler Plymouth in her lagging quarter which would be the fourth quarter of 2020.

The claimant testified the nature of her work with the employer was on-call effective January 24, 2021 just as it had been in the past. She also worked on-call for Kimberley Chrysler Plymouth beginning in January 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 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 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....

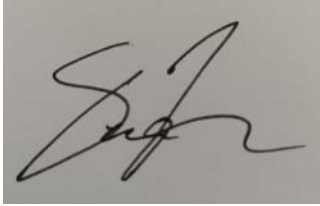
i. On-call workers.

(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. [Emphasis added]**

The legislature has provided a specific rule that applies to on-call workers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. The claimant does have other wages in her base period which are not on-call in nature. However, effective January 24, 2021, the claimant was accepting only on-call employment from the employer and Kimberley Chrysler Plymouth. As a result, the claimant is not able and available for work effective January 24, 2021 under Iowa Admin. Code r. 871-24.22(2)i(3). Benefits are denied.

DECISION:

The March 24, 2021 (reference 03) decision is reversed. The claimant was only accepting on-call work in January 2021 and as a result was not able and available for work. Benefits are denied effective January 24, 2021.

A handwritten signature in black ink, appearing to read 'S. Nelson', is written over a light gray rectangular background.

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

November 5, 2021
Decision Dated and Mailed

smn/scn