

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DAN H BALSTER
1425 – 8TH AVE
MARION IA 52302

COMPASS OF CEDAR RAPIDS LLC
c/o ADP-UCS
PO BOX 6501
DIAMOND BAR CA 91765-8501

Appeal Number: 04A-UI-05649-DT
OC: 08/17/03 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available
871 IAC 24.22-2-i(3) – On-Call Workers

STATEMENT OF THE CASE:

Dan H. Balster (claimant) appealed a representative's May 17, 2004 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Compass of Cedar Rapids, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2004 in conjunction with one related appeal, 04A-UI-05650-DT. The claimant participated in the hearing and presented testimony from one other witness, Randy Seiberts. Taya Roos appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant works as an on-call stagehand for theatrical events and other types of exhibitions at the employer's entertainment venue in Cedar Rapids, Iowa as well as at other employers' venues. The claimant works for the employer solely on an as-needed/on-call basis, most recently May 17, May 20, May 25, and May 26, for a total of 18 hours. He began working for the employer under this same arrangement approximately September 21, 1986. When an event necessitates the use of stagehands, the event coordinator contacts the local theatrical workers union representative, Mr. Seiberts, who then contacts stagehands on its membership list, including the claimant, and provides a list of arranged workers to the event coordinator. The stagehands are then paid by the employer.

The claimant established a claim for unemployment insurance benefits effective August 17, 2004. He filed an additional claim effective April 11, 2004. His base period began April 1, 2002 and ended March 31, 2003. During this period, the claimant had wages from the employer as well as 690 Payroll, Inc., Sound Concepts, Inc., Compass Facility Management (now known as Compass of Cedar Rapids, L.L.C.), MMCS, Inc., and Freeman Decorating Service. The wages from these other employers were also earned on the same as-need/on-call basis as the wages from the employer. There were no wages from any other employers during the base period.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

871 IAC 24.22-2-i(3) provides in pertinent part:

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 . . .

The claimant's base period wages consist exclusively of credits from on-call work. The claimant is therefore considered unavailable for work and ineligible for unemployment insurance benefits.

DECISION:

The representative's May 17, 2004 decision (reference 04) is affirmed. The claimant's base period consists exclusively of on-call wage credits, therefore, he is considered unavailable for work and benefits are denied.

ld/b