

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

MARC MUEHLEIP

Claimant

and

VENUWORKS OF CEDAR RAPIDS LLC

Employer

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HEARING NUMBER: 21B-UI-12985

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3 96-1 A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Marc Muehleip (Claimant) is a stagehand and member of a union that represents stagehands in Eastern Iowa. This union has many collective bargaining agreements with venues and event management companies across eastern Iowa. As part of those collective bargaining agreements, the union operates a hiring hall where employers contact the hiring hall to solicit stagehand work and the union assigns stagehands to projects based on the applicable CBA's.

VenuWorks of Cedar Rapids, LLC (Employer) is a facility-management company that manages event venues including some in Iowa. When events are coming to any of these venues, Employer requires stagehand services to help set up, tear down, and operate the shows while they run. Employer has a collective bargaining agreement with the Claimant's union. When a show is coming to the certain eastern Iowa venues, Employer hires stagehands by contacting the Claimant's hiring hall pursuant to the collective bargaining agreement. The union then assigns the Employer's work to union members. The Claimant is one of the union members who works for Employer through the union hiring hall. The Claimant keeps in regular contact with his union.

As the COVID-19 pandemic began to spread to the United States in March of 2020, Employer started cancelling events. As Employer cancelled events they no longer needed stagehand work. As a result of this, and similar decline in demand elsewhere, the Claimant experienced weeks of unemployment.

REASONING AND CONCLUSIONS OF LAW:

Unemployed Individual: In order to be eligible for benefits a worker must be unemployed. Although the eligibility section does not expressly define what is meant by “unemployed individual” the Code does define different types of unemployment. These are total unemployment, partial unemployment, and temporary unemployment (which is total unemployment for a limited time). Individuals who are “totally unemployed” may, assuming all conditions are satisfied, receive a level of benefits equal to their “weekly benefit amount.” Iowa Code §96.3(2). Persons who are only “partially unemployed” receive an adjusted benefit amount that accounts for the fact that they are receiving some wages during the week in question. Iowa Code §96.3(3). Some partially unemployed persons – those working their regular job at a reduced schedule - are exempted from some of the eligibility requirements, most notably, the job search requirement. Temporarily unemployed individual are similarly exempt from the job search requirements.

Somewhat misplaced among availability regulations is a regulation of the Department that states “[a]n 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**” 871 IAC 24.22(i)(3). What this regulation means is that if all the credits in the base period, from every employer, are for on-call work then the claimant is **not considered unemployed** and would thus not ever be eligible for unemployment benefits based on that base period. This would **not be** a finding that the worker is unavailable for work during the benefit year, but would be a finding that the worker is not an “unemployed individual” and so is not eligible for benefits.

Yet at the same time, the regulations of the Department provide:

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union’s business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual’s union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual’s professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

871 24.22(3)(c). (We note that Iowa most recent extended benefits period ended on October 31, 2020.) The regulations further state “Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership.” 871 IAC 24.22(3)(f)(4). The Claimant clearly satisfies his obligation to earnestly and actively seek work by his union hall activities.

This brings us the quandary in this case. Is a worker who takes assignment through a union hall to be considered an “on-call” worker? If so then that worker could never receive unemployment benefits so long as their wages credits were based on work they got through an exclusive relationship with the union hall. Yet that same worker would be considered to be earnestly and actively seeking work by maintaining active involvement in the hiring hall. But the union is not going to provide referral for non-members, and as the Claimant testified, will generally require members to only take work of the type in question through the hiring hall. Put together, then, if we found hiring hall work to be on call, then the rules of IWD would permit people to seek work through a nearly exclusive means which would then render them ineligible to collect benefits in the future. Further, we would have a situation where hiring hall activity would be considered adequate attachment to the labor market for one purpose, but not for another. We thus view hiring hall activities as similar to temporary employers. Working for a temporary employer is not on-call work just because it involves temporary assignments. *See e.g. Lasha Bateman v. Medical Staffing Network Inc*, 09B-UI-14482. In both such situations there is an on-going relationship with an entity that functions, in effect, as a broker for multiple opportunities, resulting in work that is generally more regular than if no broker were used. In that both temporary employers, and union hiring halls, are addressed specially by the law we view these situations as not involving on-call work. Notably, our decision today is limited to the hiring hall situation described by rule 24.22(3). We are not ruling that seeking on-call work from multiple sources, or having long-term assignments from on-call work, etc. will mean the work is not on-call. We are saying that given the contents of rule 24.22(3), and the overall structure of the statutory scheme, this Claimant was not an on-call worker within the meaning of rule 871 IAC 24.22(i)(3).

Availability: On the issue of availability the rules provide that “[s]ubstitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for **one** employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits. 871 IAC 24.22(i)(1); *accord* 871 IAC 24.22(i)(3) (“An individual who is willing to accept only on-call work is not considered to be available for work.”). This is a specific application of the more general rule that a worker is disqualified as unavailable “[w]here availability for work is unduly limited because the claimant is ... waiting to go to work for a specific employer and will not consider suitable work with other employers.” 871 IAC 24.23(20). The record shows this Claimant is available for any employer who contacts the hiring hall, and that he has worked for multiple employers. He is thus not a substitute worker, and rule 24.22(i)(1) does not deny benefits.

DECISION:

The administrative law judge’s decision dated August 9, 2021 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not denied benefits for failing to be unemployed individual merely because he sought work through a hiring hall, and holds that seeking work through the hiring hall did not render Claimant unavailable for work. Accordingly, benefits are allowed if the Claimant is otherwise eligible.

The Employer should not that some of the benefits here may be chargeable during weeks that IWD was waiving charges for COVID related unemployment, and the Employer may be able to contact IWD tax bureau about possible waiver of some of these charges.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv