

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**VICKY M GALVAN**  
Claimant

**APPEAL NO. 10A-UI-09702-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMCAST SPECTACOR LP ET AL  
GLOBAL SPECTRUM LP**  
Employer

**OC: 07/19/09**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the representative's decision dated June 28, 2010, reference 04, which denied benefits effective May 16, 2010 finding that the claimant was still employed in an on-call job in the same capacity as the original agreement of hire and therefore is not available for work within the meaning of the law. After due notice, a telephone hearing was held on August 26, 2010. The claimant did participate. The employer participated by Diane Frischmeyer, Director of Finance.

**ISSUE:**

At issue in this matter is whether the claimant is employed on call in the same capacity as the original agreement of hire.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Vicky Galvan began employment with Global Spectrum on December 23, 2008 and continues to be employed at the time of hearing. Ms. Galvan was hired for and continues to hold the position of an on-call event employee. The claimant is guaranteed no minimum number of working hours each week. Employees in the capacity of on-call event workers are scheduled or summoned to work as needed and are guaranteed no minimum number of working hours each week. The claimant's capacity as an on-call event worker was explained to the claimant at the time of hire and during new employee orientation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes that the claimant is not able to work and available for work.

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(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute 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(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 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because the claimant was hired to work only on call or as needed, Vicky Galvan is not considered to be unemployed within the meaning of the law. When an individual is hired to work on call the implied agreement is that they will work only when work is available and that work will not be regularly available. Thus, any diminution in hours is directly related to the

on-call availability when work is available, as no regular hours were guaranteed. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated June 28, 2010, reference 04, is affirmed. The claimant is not considered unemployed because of her on-call employment status. Benefits are denied.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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