

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN A ERICKSON**  
Claimant

**APPEAL NO. 08A-UI-00290-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUMBOLDT COMMUNITY  
SCHOOL DISTRICT**  
Employer

**OC: 12/02/07 R: 01**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 4, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 24, 2008. Claimant participated. Employer participated through Joyce Judas, Superintendent.

**ISSUE:**

The issue is whether claimant is able to and available for work effective December 2, 2007.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant has been employed since the winter of 1997 as an "on-call" or "as needed" substitute teacher when work was available during the entire employment period. Humboldt Community School District is the only insured employer in claimant's base period.

**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 § 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) and 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 § 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.

Claimant argues that each day of substitute teaching is a separate contract much as a temporary laborer would be treated under Iowa Code § 96.5(1)j. However, the legislature has provided a specific rule that applies to substitute teachers holding that this category of worker, among others, is not considered to be unemployed within the meaning of the law when the only base period wage credits are related to "on-call" work. When an individual is hired to work "on-call" the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the sporadic availability of available work as no regular hours were guaranteed. Accordingly, benefits must be denied. Claimant's remedy is to urge the legislature to alter the applicable rule.

**DECISION:**

The January 4, 2008, reference 01, decision is affirmed. The claimant is not considered unemployed because of his on-call or as-needed employment status. Benefits are denied.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/css