

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAN P JONES**  
Claimant

**APPEAL 17A-UI-11255-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST DES MOINES COMMUNITY SCHOOL  
DISTRICT**  
Employer

**OC: 10/08/17**  
**Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2)f – Part-Time Worker – Able and Available  
Iowa Admin. Code r. 871-24.22(2)i – On-call and Substitute Workers

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 30, 2017, (reference 04) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on November 21, 2017. Claimant participated with his spouse Jennifer Jones who observed. Employer responded to the hearing notice instructions but was not available at the number provided when the hearing was called twice and did not participate.

**ISSUES:**

Is the claimant partially unemployed and available for work, and if so, is the employer's account liable for potential charges?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as a substitute teacher with the West Des Moines Community School District (WDMCSD). Claimant has other employment in the base period with Iowa Department of Commerce, Waukee Community School District, and Urbandale Community School District.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant's availability for work with this employer is moot.

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".

Iowa Admin. Code r. 871-24.22(2)(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.

Iowa Admin. Code r. 871-24.22(2)(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(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as-needed, he is not considered unemployed within the meaning of the law as it pertains to this employer. 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 reduction in hours is directly related to the on-call status as no regular hours are guaranteed. However, since there are other wages in the base period, the monetary eligibility of the claimant needs to be examined to determine eligibility based upon the other employment and the lack of regular work with this on-call employer is moot. Accordingly, benefits may be allowed if the claimant is otherwise monetarily eligible and the account of WDMCSD shall not be charged.

**DECISION:**

The October 30, 2017, (reference 04) unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot as he has other wages in the base period. Benefits may be allowed if claimant is otherwise monetarily eligible and the account of WDMCSD (account number 103231) shall not be charged.

**REMAND:** The monetary eligibility and separation qualification of claimant as delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs