

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARYJO J METTILLE
Claimant

APPEAL 17A-UI-11294-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DUBUQUE COMMUNITY SCHOOL
DISTRICT**
Employer

**OC: 09/24/17
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
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 12, 2017, (reference 02) 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. Employer participated through payroll/benefits manager Amy VanderMeulen.

ISSUES:

Is claimant considered to be fully or partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a substitute para professional with the Dubuque Community School District. No certain number of hours is guaranteed. She has regular full-time wages with three other base-period Iowa employers and also with Emmi Roth located in Wisconsin during the second and third quarters of 2017, which are not included in the current base period as they are a lag quarter employer. After consulting with IWD customer service, claimant filed an original claim with an effective date of September 24, 2017. That base period consists of the second, third and fourth quarters of 2016, and the first quarter of 2017. The lag quarter is the second quarter of 2017. The claimant intends to request an adjustment to her claim's effective date by one week to October 1, 2017, so that employer Emmi Roth will fall into the base period.

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)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.

Iowa Admin. Code r. 871-24.22(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(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, she 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 Dubuque Community School District shall not be charged.

DECISION:

The October 12, 2017, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot as she has other wages in the base period. Benefits may be allowed if claimant is otherwise monetarily eligible and the account of Dubuque Community School District (account number 101899) shall not be charged.

REMAND: The claim effective date modification to October 1, 2017, and the monetary eligibility and separation qualification of claimant as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs