

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LISA M WIENEKE**

Claimant

**ALLEN MEMORIAL HOSPITAL**

Employer

**APPEAL 21A-UI-20474-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/20/21**

**Claimant: Respondent (4R)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

Employer filed an appeal from the September 22, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2021. The hearing was held with Appeal 21A-UI-20472-JC-T. The claimant did not participate. The employer participated through Aaron Wedo, HR business partner. Abby Moeller attended.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant refuse to accept an offer of suitable work?

Is the claimant able to and available for work?

Is the claimant an on-call worker?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as an on-call or as-needed with this employer from April 6, 2020 until August 23, 2020. No certain number of hours were guaranteed due to the nature of the business. Claimant agreed to the arrangement upon hire. Claimant was unresponsive to multiple attempts to offer her from shifts and was removed from the employer’s available CNA list on October 30, 2020.

**Claimant has other regular employment in the base period:**

EMPLOYER	ACCT-LOC	2019/1	2019/2	2019/3	2019/4
CREEKSIDE, INC.	604651-000	9340	9251		
HEALTHCARE RESOLUTIONS LL	604656-000		335	1611	138
BICKFORD SENIOR LIVING GR	302909-000			31	7403
SMITH, COURTNEY A	587524-000			940	
VIRGINIA GAY HOSPITAL	101113-000				

This matter was previously adjudicated in Appeal 21A-UI-20472-JC-T, with an original claim date of June 21, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

As a preliminary matter, the administrative law judge concludes the work refusal pursuant to Iowa Code § 96.5(3)a is moot.

For the reasons that follow, the administrative law judge concludes 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 96.1A, subsection 38, paragraph "b", subparagraph (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(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 96.1A(37)"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 this on-call employer is moot. Accordingly, benefits may be allowed if the claimant is otherwise monetarily eligible and the account of this employer shall **not** be charged.

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.

**DECISION:**

The September 22, 2021, (reference 04) decision is modified in favor of the appellant. The issue of work refusal is moot. 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 this employer 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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Jennifer L. Beckman  
Administrative Law Judge  
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December 9, 2021  
Decision Dated and Mailed

jlb/mh