

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**FRANK E BRACKETT**  
Claimant

**BUSCO INC ARROW STAGE LINES**  
Employer

**APPEAL 16A-UI-00042-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/22/15  
Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 21, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 25, 2016. Claimant participated. Employer participated through Robert Huffman, Des Moines Area Manager.

**ISSUES:**

Is the claimant still employed at the same hours and wages as at the time of hire?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as an on-call basis as a bus cleaner beginning in 2009 through date of hearing as hearing remains employed. Claimant was hired to work on-call or as needed when work was available. He was never guaranteed any set schedule or a particular number of hours. He was never guaranteed that he would be given more hours if he was the 'senior' cleaner. The claimant is to call in on Thursday or Friday to indicate if he was available for work. For the last six years the claimant has called in on a weekly basis on Thursday or Friday to find out when he was to work. The claimant was suspended for three days on December 18, 19, 20 for violation of a work rule. Since his suspension he has not called in to find out when he was to work. Mr. Hoffman has tried to call him on at least two occasions but the claimant did not answer the telephone.

**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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 § 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 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 only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. The administrative law judge is not persuaded that the claimant was ever told or guaranteed that he would be given more hours or a set schedule. Accordingly, benefits are denied.

**DECISION:**

The December 21, 2015, (reference 01) decision is affirmed. The claimant is not considered unemployed because of his on-call employment status. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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