

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CRYSTAL A SPRAY**  
Claimant

**ARTHUR L DAVIS PUBLISHING  
AGENCY INC**  
Employer

**APPEAL 15A-UI-10666-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/23/15**  
**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 21, 2015, (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 October 7, 2015. Claimant participated. Employer participated through office manager Elizabeth Miller.

**ISSUES:**

Is the claimant 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 was hired full time (40 hours) as an accounts receivable clerk from May 27, 2014. She resigned the full-time position on March 13, 2015, effective April 3, 2015, when she accepted a new position with P and B Eye Care, LLC. Then she agreed with Arthur Davis to work when work was available on-call or as-needed. She last worked on June 3, 2015. She was discharged from P and B Eye Care and found other employment with Ameriprise Financial that started on September 21, 2015.

**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 § 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 employed as of April 3, 2015, 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 Arthur L. Davis Publishing Agency, Inc. shall not be charged.

**DECISION:**

The September 21, 2015, (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 she has other wages in the base period. Benefits may be allowed if claimant is otherwise monetarily eligible and the account of Arthur L. Davis Publishing Agency, Inc. (account number 247622) shall not be charged. Note to parties: The reference 02 unemployment insurance decision addresses the April 3, 2015, separation from full-time employment.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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