

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEBRA J WADE**  
Claimant

**QUEST DIAGNOSTICS INC**  
Employer

**APPEAL 21A-UI-07958-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20  
Claimant: Appellant (1-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.7(2)a(2) – Employer Chargeability

**STATEMENT OF THE CASE:**

On March 19, 2021, Debra J. Wade (claimant) filed an appeal from the March 16, 2021, reference 01, unemployment insurance decision that denied benefits effective March 22, 2020, based upon the determination she is an on-call worker and was still employed in the same capacity as the original contract of hire. After due notice was issued, a telephone hearing was held on May 28, 2021. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The Claimant's Exhibits A through G were admitted into the record.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant an on-call worker?  
Was the claimant able to and available for work effective March 22, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working on April 19, 2019, as a per diem Health Screener. She is not guaranteed any hours and works only when work is available. As a result of the pandemic, the employer's business has slowed and it does not have as much work available.

The claimant filed her claim for benefits effective March 22, 2020, and her base period includes wage credits earned between October 1, 2018 and September 30, 2019. During that time, the claimant also had on-call, or as needed, positions with Simpson College and Visiting Nurse Services. She did not have any other employment during her base period.

The claimant has an outstanding claim for Pandemic Unemployment Assistance (PUA), and whether she is eligible for PUA has not yet been investigated or adjudicated by the Benefits Bureau.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is an on-call employee and is not considered unemployed under Iowa law. Benefits are denied.

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 Code section 96.19(38) provides, in relevant part:

Definitions.

38. Total and partial unemployment

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

(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.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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. The claimant was hired to work on an as needed basis, which is considered on-call employment for purposes of eligibility for unemployment insurance benefits. Additionally, the claimant's base period consists of only on-call wages. Therefore, she is not considered to be unemployed within the meaning of the law. Accordingly, benefits are denied.

As the claimant is not eligible for state benefits and has a pending PUA application, whether the claimant is eligible for PUA is remanded to the Benefits Bureau for review and determination.

**DECISION:**

The March 16, 2021, reference 01, unemployment insurance decision is affirmed. The claimant is an on-call worker and is not considered unemployed effective March 22, 2020. Benefits are denied.

**REMANDS:**

As the claimant is not eligible for state benefits and has a pending PUA application, whether the claimant is eligible for PUA is remanded to the Benefits Bureau for review and determination.



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Stephanie R. Callahan  
Administrative Law Judge

June 14, 2021  
Decision Dated and Mailed

src/scn