

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JULIE A BROADRICK
1925 – 14TH AVE S
CLINTON IA 52732**

**DATA DIMENSIONS CORPORATION
PO BOX 01465
JANESVILLE WI 53547**

**Appeal Number: 04A-UI-02262-B4T
OC: 01-18-04 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Julie A. Broadrick appealed from an unemployment insurance decision dated February 26, 2004, reference 01, that held, in effect, the claimant was still employed in her on-call job with Data Dimensions Corporation under the same terms and conditions as her original contract of hire. The claimant was found not available for work and benefits were denied January 18, 2004.

A telephone conference hearing was scheduled and held on March 18, 2004 pursuant to due notice. Julie A. Broadrick participated. Jean Stefano, Human Resources Administrator, participated on behalf of Data Dimensions Corporation.

Official notice was taken of the decision dated February 26, 2004, reference 01, together with the pages attached thereto (five pages in all). Employer's Exhibit 1, consisting of six pages, admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Data Dimensions Corporation was engaged in the business of records retention and digital imaging. Julie A. Broadrick was employed on or about March 3, 1994 as a part-time employee with Data Dimensions Corporation. Subsequently, the claimant worked four hours per day, approximately 20 hours per week as a part-time employee.

On or about November 1, 1998 the claimant had recently given birth to a child and her husband was working hours where she needed more flexibility in her work shift. The claimant requested to be placed in an on-call status with Data Dimensions Corporation.

Page 4 attached to Exhibit 1 admitted into evidence discloses the On-Call Schedule Requirements, which is a portion of the employee handbook, which the claimant received on October 3, 2001. The claimant requested and was granted on-call status rather than part-time status. Part-time employees are provided work only when work is available. The claimant then worked a limited number of hours at a work schedule that she believed was more flexible until May 28, 2003, when she went on part-time employment once again. Later the claimant again requested on-call status and was granted on-call status by the employer. The knew or should have known of the limited work that might be available as an on-call employee with Data Dimensions Corporation.

The claimant was last employed as an on-call employee in January 2004. No other work has been available to the claimant as an on-call employee up to the present day.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 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.

The evidence in the record clearly establishes that the claimant was initially employed as a part-time employee working four hours per day, 20 hours per week. Due to personal problems involving the birth of a child and her husband's work schedule, she requested that the part-time employment be changed to on-call employment with Data Dimensions Corporation. The claimant received a copy of the employer's rules and knew or should have known that on-call employees were not provided or guaranteed employment when business is lacking.

The claimant chose to limit her availability as a part-time employee to that of an on-call employee for personal reasons. Under such circumstances, the claimant is found not available for work due to limiting her availability with Data Dimensions Corporation. In addition, the claimant had requested the on-call status, which changed her from a part-time employee who was guaranteed hours of employment, to that of an on-call status, for which there was no guarantee made by the employer that work would be available on any occasion.

Under such circumstances, the administrative law judge concludes that Julie A. Broadrick is not eligible to receive unemployment insurance benefits because she is still employed in her on-call job under the same terms and conditions as she had requested, all within the intent and meaning of Iowa Code Section 96.4-3.

DECISION:

The unemployment insurance decision dated February 26, 2004, reference 01, is affirmed. Julie A. Broadrick is still employed in her on-call job in the same capacity as she had requested and benefits are denied effective January 18, 2004 until such time as she has requalified under the provisions of the Iowa Employment Security Law.

b/b