

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAKEYSHA HOLMES
Claimant

ABCM CORPORATION
Employer

APPEAL 21A-UI-16074-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/25/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers

STATEMENT OF THE CASE:

The claimant/appellant, Lakeysha Jones, filed an appeal from the July 15, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective April 25, 2021 as she was still employed at the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on September 9, 2021. The claimant participated personally. The employer, ABCM Corporation, did not participate. No exhibits were received into the record. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant started working for this employer in October 2019 as an on-call certified nursing assistant (CNA). She worked in that position as her hours were available until May 25, 2021, when she separated from employment. Her rate of pay was \$14.90.

The claimant filed her original claim effective April 5, 2020. The claimant's administrative records establish that her base period for Iowa wages included only the following on-call wages:

	2020/1	2020/2	2020/3	2020/4
ABCM Corp.	\$8665	\$3490	\$87	\$4222

Claimant's weekly benefit amount established for her April 5, 2020 original claim date is \$393.00. Claimant has no other wages in her base period that are not from on-call work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 96.1A(37) provides:

"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.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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.

The legislature has provided a specific rule that applies to on-call workers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. 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 sporadic availability of available work as no regular hours are guaranteed. Claimant has only on-call wages in her base period. Accordingly, the claimant is not considered an unemployed individual effective April 5, 2021, and unemployment insurance benefits funded by the State of Iowa are denied.

DECISION:

The July 15, 2021 (reference 01) decision is affirmed. Claimant was working on call and was not guaranteed work. She is therefore not considered unemployed pursuant to Iowa law. Benefits are denied effective April 5, 2021.



Sean M. Nelson
Administrative Law Judge
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September 15, 2021
Decision Dated and Mailed

smn/ol