

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**STEPHANIE L WRIGHT**

Claimant

**APPEAL 18A-UI-12455-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRAPETREE MEDICAL STAFFING INC**

Employer

**OC: 11/25/18**

**Claimant: Respondent (2)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2)i – Able & Available – On-Call Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 19, 2018 (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was able to and available for work. The parties were properly notified of the hearing. A telephonic hearing was held on January 16, 2019. The claimant, Stephanie L. Wright, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Grapetree Medical Staffing, Inc., participated through Abby Brophy, Human Resources Specialist. Employer's Exhibit 1 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is claimant considered to be fully or partially unemployed effective November 25, 2018?  
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 employed part-time on-call employee, most recently as a certified nursing assistant, beginning on October 17, 2017. Claimant is still an active part-time, on-call employee for this employer. She earns \$18.00 per hour. Claimant is not guaranteed any hours in her employment. The employer operates as a staffing agency for other facilities. It gives all employees the option to look online and see what facilities are offering hours and what those hours are. Employees can then sign up for shifts online or contact the employer to pick up shifts.

The administrative record shows that claimant earned wages from this employer in three quarters of her base period. These quarters all indicate claimant was working the part-time, on-call schedule that the employer described. Claimant earned \$4,546.00 in the fourth quarter of 2017. At \$18.00 per hour, this breaks down to 19.4 hours per week. Claimant earned

\$3,690.00 in the first quarter of 2018. At \$18.00 per hour, this breaks down to 15.8 hours per week. Claimant earned \$4,545.00 in the second quarter of 2018. At \$18.00 per hour, this breaks down to 19.4 hours per week. Claimant has wages from one other employer in the first quarter of her base period, which was the third quarter of 2017.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is not eligible for unemployment insurance benefits.

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 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.

(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.

(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.

...

(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.

Because claimant was hired to work only on-call or as needed, and the wage history consists of only on-call wages, she 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 or claimant elects not to accept work as no regular hours were guaranteed. Accordingly, benefits are denied.

**DECISION:**

The December 19, 2018 (reference 02) unemployment insurance decision is reversed. Claimant is not considered unemployed because of her on-call employment status in her wage credit history. Therefore, benefits are denied.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn