

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**CEBRA D GRAVETT**  
Claimant

**APPEAL NO. 11A-UI-01448-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVIS COUNTY COMMUNITY SCHOOL  
DISTRICT**  
Employer

**OC: 12-05-10**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 26, 2011, reference 02, decision that allowed benefits but did not charge this employer for benefits. After due notice was issued, a hearing was held on March 8, 2011. The claimant did participate. The employer did participate through Dan Roberts, Director of Support Services and Kim Johnson, Superintendent.

**ISSUE:**

Is the claimant an on-call worker or does she have reasonable assurance of continued employment between academic years?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as an on-call or as-needed worker in the lunch room during the school year. No certain number of hours is guaranteed due to the nature of the business. Claimant has other regular employment in the base period.

When the claimant's Davis County wages were deleted from her base period, her weekly benefit amount dropped, leaving her overpaid for the two-week period ending January 1, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is available for work but as she is an on-call worker, this employer's account shall not be charged.

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 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 24.22(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.

871 IAC 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(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

871 IAC 24.52(6) provides:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Because claimant was hired to work only on-call or as-needed, she is not considered to be unemployed within the meaning of the law with regard 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 claimant is eligible for benefits based upon the other employment and the lack of regular work with this on-call employer shall not act to deny her benefits. Accordingly, benefits are allowed if the claimant is otherwise monetarily eligible and the account of Davis County Community School District (account number 101769-000) shall not be charged.

**DECISION:**

The January 26, 2011 (reference 02) decision is affirmed. The claimant's on-call status renders availability for this employment moot as she has other wages in the base period. Benefits are allowed if claimant is otherwise monetarily eligible and the account of Davis County Community School District (account number 101769-000) shall not be charged.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/css