

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOLEEN J POST
Claimant

APPEAL NO. 12A-UI-02232-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA SUBSTANCE ABUSE COUNCIL INC
Employer

**OC: 10/02/11
Claimant: Appellant (1)**

871 IAC 24.22(2)i(3) – Eligibility of On-call Employees for Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 29, 2012, reference 01, that concluded she was not eligible for benefits because she was still employed in her on-call job in same capacity as her contract of hire. A telephone hearing was held on March 21, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. John Garringer participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant ineligible for benefits because she is employed as an on-call worker and her claim is based on wages from that employment?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits effective September 27, 2009, after her employment as a pharmacy tech with MCLD Corporation ended. She received regular and Emergency Unemployment Compensation (EUC) of \$362.00 per week on this claim through February 2011.

On February 17, 2011, she took a job with the employer as an on-call residential patient support staff person. Her job was to fill in for absent workers when they took time off. She understood that she was on-call to work as needed when the employer needed someone to replace someone who was not at work. She understood that her hours would vary from week to week with no guaranteed number of hours or days of work per week. She has continued to work under this arrangement to the present time.

The claimant was required to file a claim for a second benefit year of regular unemployment insurance benefits effective September 26, 2011. Her weekly benefit amount was determined to be \$358.00 and the claim was based solely on her wages from MCLD Corporation. She did not qualify to receive regular benefits at that time because she had not earned \$250.00 in wages since the start of her first benefit year. This is why she continued to receive EUC on her first benefit year claim. After she started working for the employer, she satisfied the \$250.00

requirement. Since she was working on-call for the employer and earned wages of less than her weekly benefit amount, she began receiving regular benefits of \$358.00 per week (reduced by her wages) on her second benefit year claim in March 2011. When her regular benefits on that claim were exhausted in July 2011, she began receiving EUC again.

The claimant was required to file a claim for a third benefit year of regular benefits effective September 25, 2011. Initially, she was determined not eligible for regular benefits because she did not have sufficient wages in her base period to qualify. As a result, she continued to receive EUC benefits on her second benefit claim.

Sometime in early 2012, the Agency discovered the claimant was potentially eligible for regular unemployment insurance benefits starting in October 2011. As of October 2, 2011, the quarters changed in the claimant's base period to include \$1,951.00 in wages from the employer for first quarter 2011 and \$2,146.00 in wages from the employer for the second quarter 2011. Her weekly benefit amount of \$93.00 and maximum benefit amount of \$1,366.17 were based exclusively on her on-call employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for regular unemployment insurance benefits effective October 2, 2011.

The unemployment rules have a rule for claimants whose only base-period wages when they apply for unemployment insurance benefits are from on-call work.

871 IAC 24.22(2)i(3) provides:

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(38)"a" and "b."

An on-call worker is not considered an unemployed individual and is not eligible for benefits because she is still working in the same capacity as she was when she was hired. The claimant's hours and earnings vary from week to week depending on the employer's needs from day-to-day, which the claimant knew when she was hired.

The claimant mentioned that she was found eligible for benefits while working for the employer in a decision of an administrative law judge dated May 10, 2011. In fact, this decision is consistent with that decision because the judge ruled the claimant was eligible for benefits while working for the employer, but only because the wages on which her claim was based were solely from her full-time job with MCLD Corporation. In this case, the claim filed effective October 2, 2011, was based solely on on-call employment and the law does not grant benefits in such a case.

DECISION:

The unemployment insurance decision dated February 29, 2012, reference 01, is affirmed. The claimant is ineligible for regular unemployment insurance benefits effective October 2, 2011.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs