

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA M CHIDO
Claimant

APPEAL NO: 14A-UI-09312-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GLOBAL SPECTRUM LP
Employer

**OC: 04/27/14
Claimant: Appellant (1)**

Section 96.19-38 – Partial Unemployment
871 IAC 24.23(26) – Benefit Eligibility
871 IAC 24.22(2)i(3) – On call Workers

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated August 29, 2014 (reference 04) which held she was still employed on-call with Global Spectrum, L.P. (employer), working whenever work was available, and that benefits were denied. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 30, 2014. The claimant participated in the hearing. Diane Frishmeyer participated on behalf of the employer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able and available for work by not being employed under her same hours and wages and eligible for full or partial unemployment insurance benefits during weeks she is not earning at least her weekly benefit amount plus \$15.00?

FINDINGS OF FACT:

The claimant is a member of the local union. She and other stage hands are on the union list for employment opportunities when organizations such as Global Spectrum, Civic Center of Greater Des Moines, and SMG request help. These are the only employers in the claimant's base period.

Claimant works as an on-call stage hand for the employer and she continues the same work through the date of this hearing. Agency records shows she earned reported wages for the employer: first quarter 2013 - \$248; second quarter - \$905; third quarter - \$1363; fourth quarter - \$1709; and first quarter 2014 - \$1052. The claimant is contacted by the union to work a stage hand job for the employer and the work is sporadic. The union has a list of stage hands and calls the claimant based on priority. While the claimant would like to be called for work more often, she is not seeking other employment outside her current work arrangements.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.19(38) 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, 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.

An individual shall be deemed partially unemployed in any week in which 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.

Rule 871 IAC 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.

Rule 871 IAC 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 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The administrative law judge concludes claimant does not meet the availability requirements of the law for full or partial unemployment benefits.

Claimant's base-period wage credits are for three employers for whom she performs on-call stage hand jobs when needed. These employers provide claimant such work as it makes available to her through the union who determines who gets called according to a priority list. The claimant's employment has been constant as an on-call stage hand worker, which has not changed as of the date of the hearing in this matter. She does not meet the availability requirements of the law for full or partial unemployment benefits.

DECISION:

The representative's August 29, 2014 (reference 04) decision is affirmed. The claimant does not meet the availability requirements of the law for unemployment benefits because of her exclusive on-call employment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can