

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIDGETTE M LOCKMAN**

Claimant

**APPEAL NO. 13A-UI-00313-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE ARC OF EAST CENTRAL IOWA**

Employer

**OC: 11/18/12**

**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 20, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on February 11, 2013. Claimant participated. Employer participated through director of operations, Tom Doermann. Department's Exhibit D-1 was received. Claimant's Exhibit A was received.

**ISSUES:**

Is the claimant's appeal timely?

Is the claimant able to and available for work?

Is the claimant partially unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant had her mail held from December 22, 2012 through January 3, 2013. She received the decision on January 4, 2013 and filed her appeal on January 8, 2013.

Claimant was approved for Department Approved Training (DAT) from August 21, 2011 through November 19, 2011, November 20, 2011 through May 12, 2012, May 20 through August 11, 2012, and August 12, 2012 through December 15, 2012. She is in the application process for DAT from January 22 through March 15, 2013. (Department's Exhibit D-1, Claimant's Exhibit A) She has a partial quarter of regular full-time employment at Hawkeye Area Community Action Program, Inc. in the third quarter of 2011, the first quarter of her base period. All other wages in the current base period beginning November 18, 2012 from The Arc of East Central Iowa, Kids Inc. and McNeal Enterprises LLC are from on-call, as-needed, or substitute employment. She is not monetarily eligible based upon the wages from Hawkeye, because there is only one quarter of wages in the new claim base period.

Wages reported from original claim date November 18, 2012:

EMPLOYER	Year/Quarter	2011/3	2011/4	2012/1	2012/2	2012/3
<b>HAWKEYE AREA COMM AC</b>		<b>1929</b>				
THE ARC OF E CTRL IOWA		1383	1327	1169	1132	559
KIDS INC		535				
MCNEAL ENT LLC			76	189		

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be unemployed.

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) and (3) provide:

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.

(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.

Because claimant was hired to work only on-call or as-needed, and the wage history consists of only on-call wages, except for one quarter of regular 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 as no regular hours were guaranteed. Accordingly, benefits must be denied.

**DECISION:**

The December 20, 2012 (reference 01) decision is affirmed. The claimant's appeal is timely but she is not considered unemployed because of her on-call employment status and wage credit history. Benefits are denied.

Because claimant is held to be ineligible, the ALJ did not forward the exhibits to IWD, UISC that handles DAT applications. If she wishes to do so, DAT information is handled at the Call Center:

UISC  
PO Box 10332  
Des Moines IA 50309

Include your name and the last four digits of your social security number on the documents submitted.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css