

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT WEYRAUCH
Claimant

APPEAL 21A-UI-04210-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RGIS LLC
Employer

**OC: 11/17/19
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 20, 2021 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective November 8, 2020, as he was still employed at the same hours and same wages as his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on April 6, 2021. The claimant participated personally. The employer, RGIS LLC, participated through Zone Manager Johnathan TePaske. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

1. Is the claimant eligible for total or partial unemployment benefits?
2. Is claimant employed for the same hours and wages?
3. Is the claimant able to and available for work?
4. Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant started working for this employer in 2003 as an on-call inventory auditor for the employer, RGIS LLC. The claimant's hours varied wildly due to employer's client's needs during a particular two-week pay period. Given this context, the claimant has never been guaranteed hours per pay period.

Claimant filed his original claim effective November 15, 2020. Claimant's administrative records establish that his base period for Iowa wages included only the following on-call wages:

	2018/3	2018/4	2019/1	2019/2
RGIS LLC	\$4776	\$3303	\$4017	\$3389

Claimant's weekly benefit amount established for his March 22, 2020 original claim date is \$222.00. Claimant has no other wages in his base period that are not from on-call work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for unemployment because his base period consists entirely of on-call wages and cannot be considered partially unemployed as a matter of law.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Code section 96.1A(37) 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 either of the following apply:

(1) 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.

(2) 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.

Iowa Admin. Code r. 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....

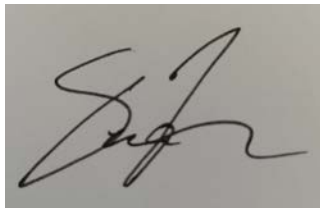
i. On-call workers.

(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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The legislature has provided a specific rule that applies to on-call workers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. 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 sporadic availability of available work as no regular hours are guaranteed. Claimant has only on-call wages in his base period. Accordingly, the claimant is not considered an unemployed individual effective November 8, 2020, and unemployment insurance benefits funded by the State of Iowa are denied. The remaining issues are moot.

DECISION:

The January 20, 2021 (reference 02) decision is affirmed. The claimant was working on call and was not guaranteed work. He is therefore not considered unemployed pursuant to Iowa law. Benefits are denied effective November 8, 2020.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

April 9, 2021
Decision Dated and Mailed

smn/scn