

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY L DEMASSE

Claimant

APPEAL NO. 12A-UI-08743-HT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

COMCAST SPECTACOR LP ET AL

GLOBAL SPECTRUM

Employer

OC: 06/17/12

Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Troy Demasse, filed an appeal from a decision dated July 19, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 17, 2012. The claimant participated on his own behalf. The employer, Global Spectrum, participated by Director of Financial Diane Frischmiere.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Troy Demasse began employment with Global Spectrum May 1, 2008 and remains in that employment as of the present date. He was hired as a part-time, on-call parking attendant and all his base period wages were earned in this capacity.

REASONING AND CONCLUSIONS 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 96.19, 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 section 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.

The claimant has worked exclusively in on-call work for the past four years, accepting no other work and earning only on-call wages in his base period. Under the provisions of the above Administrative Code sections, those times between on-call work is not considered to be unemployment and the claimant is not eligible for benefits.

The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 19, 2012, reference 01, is affirmed. Troy Demasse is ineligible to receive unemployment benefits, as he is not able and available for work

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw