

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES WOODS III
Claimant

MISSISSIPPI BEND AREA EDUCATION
Employer

APPEAL 21A-UI-03405-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.22(2)(i)(1) – Eligibility – On-call workers
Iowa Admin. Code r. 871-24.22(2)(i)(3) – Eligibility – A&A – On-call workers, wage history

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 11, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 25, 2021, at 9:00 a.m. Claimant participated. Catherine Pratscher-Woods served as claimant’s non-attorney representative and was a witness for claimant. Employer participated through Anne Budde, Coordinator of Student Programs, and Holli Ebizo, Executive Administrative Assistant of Human Resources. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is an on-call worker.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as an on-call Driver Education Instructor with Mississippi Bend Area Education. Claimant filed an initial claim for benefits effective March 22, 2020. Claimant’s base period includes the fourth quarter of 2018 through the third quarter of 2019. During that time, claimant was also employed as an on-call Substitute Teacher with the Davenport Community School District. All wages in claimant’s base period were earned for on-call work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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".

Iowa Admin. Code r. 871-24.22(2)i(1) and (3) provide:

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.

(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 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.

Because claimant was hired to work only on-call or as needed and claimant's wage history consists entirely of on-call wages, claimant 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 are denied.

DECISION:

The January 11, 2021 (reference 02) unemployment insurance decision is modified in favor of respondent. Claimant is not considered unemployed because of his on-call employment status in the wage credit history. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge
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March 30, 2021
Decision Dated and Mailed

acw/scn

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.