

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL L SIMPSON**  
Claimant

**VENUWORKS OF CEDAR RAPIDS LLC**  
Employer

**APPEAL 21A-UI-13810-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21**  
**Claimant: Respondent (2)**

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  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer/appellant, Venuworks of Cedar Rapids LLC., filed an appeal from the June 1, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2021. The claimant, Michael L. Simpson, participated in the hearing. The employer participated through Sean Meloy.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant an on-call worker?  
Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant able to and available for work?  
Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established his claim for benefits effective March 14, 2021. Claimant has worked for this employer as an on-call stagehand since 1999. He is not guaranteed any set number of hours or shifts. The employer utilizes the local union when it has assignments, which in turn, assign claimant to events. Claimant’s base period history includes all on-call work.

Since March 14, 2021, claimant has been assigned several events and worked as requested. He has no other restrictions to his employment. Claimant made weekly continued claims for the period of March 14, 2021 through June 5, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits for the period between March 14, 2021 and June 5, 2021.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 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 38, paragraph "b", subparagraph (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(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 March 14, 2021, and unemployment insurance benefits funded by the State of Iowa are denied.

*This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.*

**DECISION:**

The unemployment insurance decision dated June 1, 2021, (reference 01) is REVERSED. Claimant works on call and is not guaranteed work. He is therefore not considered unemployed pursuant to Iowa law. Regular unemployment insurance benefits funded by the state of Iowa are denied for the period of March 14, 2021 through June 5, 2021.

**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.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. More information about how to apply for PUA is available online at:

[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)

If you have applied and have been approved for PUA benefits, this decision will not negatively impact your entitlement to PUA benefits.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>



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August 23, 2021  
Decision Dated and Mailed

jlb/scn