

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE D YORK
Claimant

APPEAL NO: 13A-UI-00477-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOCKENBERGS EQUIP & SUPPLY CO INC
Employer

OC: 12/09/12

Claimant: Appellant (4)

Section 96.4-3 – Able and Available
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Shane D. York (claimant) appealed a representative’s January 9, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Hockenbergs Equipment & Supply Company, Inc. (employer) because he was working “on-call.” Hearing notices were mailed to the parties’ last-known addresses of record for a telephone hearing to be held at 9:30 a.m. on February 15, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Dustin Tyler would participate as the employer’s representative. When the administrative law judge contacted the employer for the hearing, Mr. Tyler agreed that the administrative law judge should make a determination based upon a review of the available information.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant began working for the employer as an on-call warehouse helper September 10, 2012. He last worked on or about November 16, 2012. The employer never guaranteed the claimant any hours, but there were weeks where the claimant worked nearly full-time hours because of the absence of another employee. The employer has not needed the claimant during any time the claimant was not working elsewhere since November 16, but still considers the claimant to be an on-call employee. The claimant established an unemployment insurance benefit year effective December 9, 2012. It does not appear that the claimant has restricted his search for employment to on-call employment.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3.

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's current employment with the employer is on-call. However, his base period wage credits are not with the employer.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began July 1, 2011 and ended June 30, 2012. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's January 9, 2013 decision (reference 01) is modified in favor of the claimant. The claimant is able to work and available for work effective December 9, 2012. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/tll