

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROCHELLE ESTRIFE**  
Claimant

**APPEAL NO. 10A-UI-10027-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NITE OWL STAFFING INC**  
Employer

**OC: 04/04/10**  
**Claimant: Respondent (2-R)**

Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 8, 2010, reference 01, that concluded the claimant was eligible for partial benefits and the employer's account was subject to charge because the claimant's hours had been reduced. A telephone hearing was held on August 31, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Christine Denning participated in the hearing on behalf of the employer.

**ISSUE:**

Is the claimant eligible for partial unemployment insurance benefits?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant starting working for the employer January 24, 2009, and is still employed. The claimant was informed and understood that she was employed on an on-call basis, and there was no guarantee as to the number of hours or days of work per week. The work fluctuates throughout the year and depends on events and the number of workers needed. The claimant works on-call, as-needed as a banquet server and concession worker. She is not a scheduled employee.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 4, 2010. The employer was the only employer reporting wages for the claimant during her base period from January 1, 2009, to December 31, 2009.

The claimant filed for and received a total of \$341.00 in unemployment insurance benefits for the weeks between April 4 and August 28, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in 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(38)"a" and "b."

Based on the unemployment insurance rule cited above, the claimant is not qualified to receive unemployment insurance benefits because her base-period wage credits consist exclusively of wage credits by performing on-call work.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 8, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits because does not meet the law's definition of an unemployed worker.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw