

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GISELLE M ROENFELD
Claimant

APPEAL NO. 14A-UI-05556-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GLENWOOD COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 04/27/14
Claimant: Appellant (4R)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 21, 2014, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on June 19, 2014. The claimant did participate. The employer did participate through Shirley Lundgren, Business Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a substitute or on-call worker for the school district since January 24, 2014. She is working when needed and called by the school district. She also has other wages in the base period history. Claimant has other regular full-time employment in her base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's availability for work with this employer is moot.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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

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.

(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 § 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 is working only on-call or as-needed, she 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 reduction in hours is directly related to the on-call status as no regular hours are guaranteed. However, since there are other wages in the base period, the monetary eligibility of the claimant needs to be examined to determine eligibility based upon the other employment and the lack of regular work with this on-call employer is moot. Accordingly, benefits may be allowed if the claimant is otherwise monetarily eligible and the account of Glenwood Community School District (account number 102894) shall not be charged.

DECISION:

The May 21, 2014, (reference 02) decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot as she has other wages in the base period. Benefits may be allowed if claimant is otherwise monetarily eligible and the account of Glenwood Community School District (account number 102894) shall not be charged.

REMAND: The monetary eligibility of claimant as delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css