

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHARIAH M SMITH**  
Claimant

**CALVARY FAMILY CENTER INC**  
Employer

**APPEAL 19A-UI-02846-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/19**  
**Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 2, 2019, (reference 06), decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 24, 2019. Claimant participated. Employer participated through Phyllis Payton, Day Care Director. Official notice was taken of agency records, including claimant's wage records.

**ISSUE:**

Is the claimant able to and available for work, and is she partially unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired to work part-time or on an as needed basis as a child care assistant beginning on August 9, 2018 through date of hearing as she remains an employee. The claimant is currently attending school full time. The wages earned by claimant in her base period were earned when she was a full time student and during summers when school was on break. Claimant has other wages in her base period from other employers. Claimant was laid off from her primary part-time employer when they closed the store where she worked.

Claimant has been granted department approved training from March 16, 2019 through May 4, 2019.

**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 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) provides:

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.

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 96.19(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, 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 this employer (account number 594904) shall not be charged.

**DECISION:**

The April 2, 2019, (reference 06) 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 this employer (account number 594904) 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs