

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS L CANDLER
Claimant

VENUWORKS OF CEDAR RAPIDS LLC
Employer

APPEAL 21A-UI-04329-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)i(1) – Benefit Eligibility - Substitute Workers
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-Call Wage Credits
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

On January 31, 2021, the claimant, Dennis L. Candler, filed an appeal from the January 25, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed and was therefore ineligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Wednesday, April 7, 2021. The claimant, Dennis L. Candler, participated. The employer, Venuworks of Cedar Rapids, L.L.C., registered witness Sean Meloy but he did not answer when called for the hearing. No exhibits were offered or admitted into the record.

ISSUES:

Was claimant totally, partially, or temporarily unemployed effective November 15, 2020?
Was claimant an on-call worker?
Is the employer's account liable for charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed on call as a stagehand with Venuworks of Cedar Rapids, L.L.C., since sometime in 1999. Claimant is still employed in this capacity with Venuworks. Claimant has the power to reject any job offered to him by the union steward affiliated with Venuworks, and this will not affect his future offers for employment.

Claimant opened his claim for benefits effective November 15, 2020, after he was laid off from a full-time position at NCS Pearson. Claimant had been working for that employer on a project, and when the project was completed, claimant separated from employment for several weeks. He was then brought back to work for another project.

Claimant's WAGE-A information shows significant wages from both Nordstrom, Inc., and NCS Pearson, Inc.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not unemployed as it pertains to employer Venuworks of Cedar Rapids, L.L.C., but he may be eligible for benefits based on employment with other employers.

Iowa Admin. Code r. 871-24.22(2)(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)(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, he is not considered unemployed within the meaning of the law as it pertains to this employer. 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 employer Venuworks of Cedar Rapids, L.L.C. (318569-000) shall not be charged.

DECISION:

The January 25, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot as he has other wages in the base period. Benefits may be allowed if claimant is otherwise monetarily eligible and the account of Venuworks of Cedar Rapids, L.L.C. (account number 318569) shall not be charged.

REMAND:

The monetary eligibility and separation issues are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
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Fax (515)478-3528

April 12, 2021
Decision Dated and Mailed

lj/scn