

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIEL W SLOAN
Claimant

EASTERN IOWA DRAINAGE SERVICES INC
Employer

APPEAL 16A-UI-08563-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/10/16
Claimant: Respondent (4R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the July 27, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon refusing an offer of work. After due notice was issued, a telephone conference hearing was held on August 24, 2016. The claimant did not participate because he did not register a phone number. The employer participated through Jody Yutesler, vice president. Employer exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative record. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant partially unemployed and available for work, and if so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant opened his unemployment claim with an effective date of July 10, 2016. The claimant would perform work on an on-call basis as a farmer tiler and mechanic, as needed as a substitute when full-time employees were unavailable. The rate of pay was \$13.00 per hour plus other incentives based on the type of work performed. No certain number of hours is guaranteed due to the nature of the business. The claimant has other regular employment in the base period with Kemmenn Chevrolet Inc.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that any offer for work from 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 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(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 this employer shall not be charged.

REMAND:

The monetary eligibility and separation qualification 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.

DECISION:

The July 27, 2016, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability or job offers 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 Eastern Iowa Drainage Services Inc. (account number 307219-000) shall not be charged. REMAND: The monetary eligibility and separation qualification 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs