

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICK J BLIEU
Claimant

HY-VEE INC
Employer

APPEAL 22A-UI-06465-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/13/22
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Eligibility – On-Call Employment
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On March 14, 2022, claimant Nick J. Blieu filed an appeal from the March 9, 2022 (reference 03) unemployment insurance decision that denied benefits based on a determination that claimant was an on-call employee and still employed in the same capacity as he was at the time of hiring. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Monday, May 9, 2022. The claimant, Nick J. Blieu, participated. The employer, Hy-Vee, Inc., participated through witness Ken McCracken, Human Resource Manager at Hy-Vee 1108; and was represented by hearing representative Larry Lampel. Claimant's Exhibits A, B, and C were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to work and available for work?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Hy-Vee, Inc., on February 23, 2021. Throughout his employment, claimant has worked for the employer as a part-time, on-call nurse.

Claimant was hired to administer COVID-19 vaccines and boosters in the employer's stores. When he was hired, there were numerous shifts available for claimant to work, as many people were interested in receiving vaccines at the time. However, as both (1) people became vaccinated and (2) CDC guidance changed, interest in vaccines and boosters waned and fewer shifts were available.

On February 14, Chelcey at the employer's West Locust location sent claimant and other on-call nurses a text message letting them know that far fewer shifts would be available effective

immediately. (Claimant's Exhibit C) Claimant indicated he wanted to remain an on-call employee and be able to accept available shifts. (Claimant's Exhibit C) He remains an active part-time, on-call employee in the employer's system.

Claimant has one other employer in the base period. Whether that employment was an on-call employment relationship has not been examined by Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not eligible for unemployment insurance benefits.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) and (3) provide:

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.

(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.

...

(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.

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 diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed.

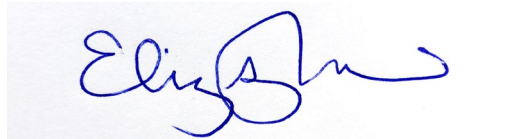
Here, claimant was hired to work only on-call or as needed by this employer. Therefore, claimant would not be eligible for benefits based solely on this employment relationship. However, claimant may be eligible for unemployment insurance benefits if he has sufficient non-on-call employment wages in his base period and he is otherwise eligible for benefits. This matter will be remanded to the Benefits Bureau for further investigation.

DECISION:

The March 9, 2022 (reference 03) unemployment insurance decision is affirmed. Claimant was an on-call employee of the employer and is still an on-call employee employed on the same terms as at the time of hire. Benefits are withheld at this time.

REMAND:

The issues of whether claimant has sufficient non-on-call employment wages in his base period to qualify for benefits and whether he is otherwise eligible for benefits are remanded to the Benefits Bureau of Iowa Workforce Development for determination.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

May 13, 2022
Decision Dated and Mailed

lj/lj