

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMMY J CAMERON
Claimant

APPEAL 16A-UI-02658-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JAI YOGESHWAR MOTEL INC
COMFORT INN**
Employer

**OC: 11/22/15
Claimant: Appellant (3-R)**

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:

The claimant filed an appeal from the February 22, 2016, (reference 02) unemployment insurance decision that denied benefits based upon not being able to or available for work for four separate weeks between December 20, 2015, and February 6, 2016. The parties were properly notified about the hearing. A telephone hearing was held on March 25, 2016. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate.

ISSUES:

Is claimant considered to be fully or partially unemployed?

Is the claimant able to work and available for work effective November 22, 2015?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed on-call, seasonal as a housekeeper from March 2014, and was separated from employment on February 10, 2016, when she quit. That separation has been resolved in the unemployment insurance decision dated February 12, 2016 (reference 04). She has no other wages in her base period history. She has claimed and received benefits on the November 22, 2015, claim through February 13, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be unemployed.

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.

(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 § 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, and the wage history consists of only on-call wages, 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 diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. Accordingly, benefits are denied.

DECISION:

The February 22, 2016, (reference 02) unemployment insurance decision is modified in favor of the respondent. The claimant is not considered unemployed because of her on-call employment status in the wage credit history. Benefits are denied regardless of her ability to and availability for work.

REMAND: The potential overpayment issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css