

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GABRIELLE MITCHELL**  
Claimant

**TRAPP ASSOCIATES REALTORS INC**  
Employer

**APPEAL 21A-UI-08775-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours  
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

On March 25, 2021, Trapp & Associates Realtors, Inc. (employer) filed an appeal from the March 23, 2021, reference 01, unemployment insurance decision that allowed benefits effective April 5, 2020, based upon the determination Gabrielle Mitchell (claimant) was temporarily laid off and considered able to and available for work. After due notice was issued, a telephone hearing was held on June 14, 2021. The claimant did not provide a phone for the hearing and did not participate. The employer participated through Gale Shinkle, Broker/Owner. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories.

The claimant submitted a request to withdraw the appeal and, if a withdrawal could not be issued in time, to continue the hearing until the withdrawal request could be approved. The claimant's request to withdraw and postpone the hearing were denied. The claimant is not the appellant in the case and cannot withdraw the appeal.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant an on-call employee?  
Was the claimant able to work, available for work, and actively and earnestly seeking work effective April 5, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant works for the employer as both an employee and an independent contractor. Most of

her income comes from the work she does as an independent contractor, specifically a realtor. In the 2019 calendar year, the claimant's income from her realtor business was \$78,269.42. The claimant earns insured wages as an employee when she provides training or performs other administrative work for the employer on an as-needed basis.

The claimant filed her claim for regular unemployment insurance benefits effective April 5, 2020, and the base period includes wages earned during the 2019 calendar year. This employer is the only employer that paid insured wages to the claimant during her base period.

During the 2020 claim year, the claimant's income from self-employment exceeded \$60K. The employer paid her \$877 in gross wages during the second quarter of 2020, and \$270 in gross wages during the third quarter before she ended the insured-wage employment on or about July 24 to focus on her real estate business. The administrative record shows the claimant filed weekly claims for benefits from April 5 through October 31, and she did not report any wages earned nor that she refused available work.

Whether the claimant is overpaid regular and federal benefits, and is subject to a penalty for misrepresentation, has not yet been investigated or adjudicated by the Integrity Bureau.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is an on-call employee and cannot be considered unemployed. Regular unemployment insurance benefits are denied.

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(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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(7) Where an individual devotes time and effort to becoming self-employed.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Because the insured work the claimant performed was 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.

Whether the claimant is overpaid regular and federal benefits, and is subject to a penalty for misrepresentation as delineated in the findings of fact, is remanded to the Integrity Bureau for review and processing.

#### **DECISION:**

The March 23, 2021, reference 01, unemployment insurance decision is reversed. The claimant's base period consists entire of on-call wages and she is not considered unemployed under Iowa law. Benefits are denied.

**REMAND:**

Whether the claimant is overpaid regular and federal benefits, and is subject to a penalty for misrepresentation as delineated in the findings of fact, is remanded to the Integrity Bureau for review and processing.

A handwritten signature in dark ink, appearing to read "Stephanie R. Callahan", with a long horizontal flourish extending to the right.

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Stephanie R. Callahan  
Administrative Law Judge

June 30, 2021  
Decision Dated and Mailed

src/ol