

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**BOYD STRONG**

Claimant

**VENUWORKS OF CEDAR RAPIDS LLC**

Employer

**APPEAL 21A-UI-13056-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21**

**Claimant: Appellant (1)**

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Admin. Code r. 871-24.22(2)i(3) – On-Call Workers

**STATEMENT OF THE CASE:**

On May 28, 2021, Boyd Strong, filed an appeal from the May 26, 2021, reference 07, unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 5, 2021, at 8:00 a.m. The claimant participated. The employer participated through Director of Finance Sean Meloy. No exhibits were admitted. Official notice was taken of the administrative records. No exhibits were received into the record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed?  
Whether claimant is able to and available for work?  
Whether claimant is still employed at the same hours and wages?  
Whether employer's account is subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment with Venuworks of Cedar Rapids LLC as a part-time on-call stage hand in June 1999. The claimant is assigned events to work on an on-call basis through the Local 191 Union Hall for stage hands.

The claimant made a claim effective March 14, 2021. The claimant did not work for any other employers after March 14, 2021. His weekly benefit amount is \$159. The administrative record Wage-A shows the claimant's base period spans from the fourth quarter of 2018 to the third quarter of 2019. The employer is the only one who paid the claimant insured wages during his base period.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is on-call and only has on-call insured wages in his base period, therefore he cannot be unemployed.

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 Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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....

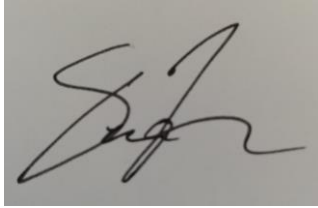
i. On-call workers.

(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.

The legislature has provided a specific rule that applies to on-call workers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" 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 sporadic availability of available work as no regular hours are guaranteed. The claimant has only on-call wages in his base period. Accordingly, the claimant is not considered an unemployed individual effective March 14, 2021, and unemployment insurance benefits funded by the State of Iowa are denied.

**DECISION:**

The May 18, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant is not partially unemployed. Benefits are denied.

A handwritten signature in black ink, appearing to read 'S. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

August 11, 2021  
Decision Dated and Mailed

smn/lj