

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NADIS BARUCIC

Claimant

APPEAL NO. 11A-UI-11831-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONTRACT TRANSPORT INC

Employer

OC: 08/07/11

Claimant: Appellant (1)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 2, 2011, reference 01, that concluded he was not eligible for unemployment insurance benefits. A telephone hearing was held on October 4, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Jean Nible participated in the hearing on behalf of the employer with a witness, Jennifer Helton. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claim filed by the claimant effective August 7, 2011, was based on the following wages: Second Quarter 2010—\$699.76 from Contract Transport and \$137.52 from First Student Management, Third Quarter 2010—\$167.91 from Contract Transport, and Fourth Quarter 2010—\$1,186.41 from Contract Transport and \$149.25 from First Student Management. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked as a casual part-time truck driver for the employer from October 27, 2004, to December 17, 2010. He had been working part time for the employer while working a full-time job for Titan Tire, which ended in August 2009.

The claimant filed for and started receiving unemployment insurance benefits in August 2009, which were based on his separation and wages from his full-time employment. He reported his part-time wages from the employer and drew partial unemployment insurance benefits.

He filed for a second benefit year effective August 8, 2010, again based on wages from his full-time employment with Titan Tire. He again reported his part-time wages from the employer and drew partial unemployment insurance benefits.

In addition to working, the claimant has been attending school full time since 2008. He has received department approved training since he started filing for unemployment insurance benefits.

Starting in the fall of 2010, the claimant had been working nearly every Sunday on a route hauling mail to St. Paul and back to Des Moines. This ended in mid-December as the employer understood that the claimant was going to let the dispatch know when he was available to work again and the claimant believed the dispatcher was going to call him when he was needed again.

When the claimant filed for a third benefit year effective August 7, 2011, all of his base-period wages were from his on-call part-time truck driving work with the employer and his on-call school bus driving with First Student Management.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

There was a dispute between the claimant and the employer about whether the claimant was going to let the dispatcher know when he was available to work again or whether the dispatcher was going to call the claimant when he was needed. It is unnecessary to decide this dispute because unemployment rules do not consider a claimant whose base-period wages are exclusively from on-call work to be an unemployed individual. The reason the claimant was able to draw benefits on the claims filed in 2009 and 2010 was because he had wages from full-time employment in addition to wages from on-call work. But the claim filed in 2011 only had on-call wages.

871 IAC 24.22(2) provides that an person must be "genuinely attached to the labor market" to be considered available for work. 871 IAC 24.22(2)i(3) states:

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."

The claimant is ineligible for unemployment insurance benefits effective August 7, 2011.

DECISION:

The unemployment insurance decision dated September 2, 2011, reference 01, is affirmed.
The claimant is ineligible for unemployment insurance benefits effective August 7, 2011.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css