

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**SELINA R CAMPOS**  
Claimant

**APPEAL 21A-UI-03658-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHISKEY RIVER ON VINTAGE INC**  
Employer

**OC: 11/29/20**  
**Claimant: Respondent (4R)**

---

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment

**STATEMENT OF THE CASE:**

On January 25, 2021, the employer, Whiskey River on Vintage, Inc., filed an appeal from the January 14, 2021 (reference 04) unemployment insurance decision that allowed benefits based upon a determination that claimant was still employed by the employer as an on-call worker. The parties were properly notified of the hearing. A telephonic hearing was held on Wednesday, March 17, 2021. The claimant, Selina R. Campos, participated. The employer, Whiskey River on Vintage, Inc., participated through Nicole Romare, Owner. Employer's Exhibit 1 was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is claimant Selina Campos still employed with employer Whiskey River on Vintage, Inc., as an on-call worker?  
Is claimant Selina Campos able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a server for this employer beginning December 31, 2019. Claimant separated from employment on February 29, 2020.

Based on the administrative record, it appears claimant has requalified for benefits since separating from this employer.

Claimant began filing for benefits in November 2020 when she was laid off from her full-time employer. She has been performing work intermittently doing snow removal. She has reported wages for the weeks ending December 5; December 26; January 2; January 16; January 23; January 30; February 6; February 13; and February 20. Claimant has remained physically able to work and available for work. She has not been required to perform work searches, as she is on a seasonal layoff and is waiting to be recalled to work.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not employed with the employer. Claimant is able to and available for work. The underlying decision is modified in favor of employer Whiskey River on Vintage, Inc.

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)(1) provides:

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.

*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.

Here, the evidence in the record establishes that claimant is no longer employed with the employer in any capacity. The employer presented claimant's separation form as an exhibit, and both parties admit that the employment relationship is over.

Claimant presented unchallenged testimony establishing she is able to and available for work. She is physically able to work. She has been available to work since her layoff, and she has intermittently performed work and reported wages earned from that work. Benefits are allowed, provided she is otherwise eligible.

Furthermore, it appears from the administrative record that claimant has earned well over ten times her weekly benefit amount since separating from this employer. This matter will be remanded for a ten times requalification decision to determine whether the employer is chargeable for any of claimant's benefits.

**DECISION:**

The January 14, 2021 (reference 04) unemployment insurance decision is modified in favor of the employer, Whiskey River on Vintage, Inc. Claimant is no longer employed with the employer. She is able to and available for work effective November 29, 2020. Benefits are allowed, provided claimant is otherwise eligible.

**REMAND:**

The issue of whether claimant has earned ten times her weekly benefit amount and requalified for benefits since separating from this employer is remanded to the Benefits Bureau of Iowa Workforce Development.



---

Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

March 18, 2021  
Decision Dated and Mailed

lj/scn