

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JODI M SIMON
Claimant

**WESTERN DUBUQUE COMMUNITY
SCHOOL DISTRICT
WESTERN DUBUQUE CSD**
Employer

APPEAL NO. 20R-UI-12115-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (2R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 16, 2020, reference 01, decision the allowed benefits to the claimant effective March 15, 2020, provided she met all other eligibility requirements, based on the deputy's conclusion, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on November 24, 2020. Claimant Jodi Simon participated. Mary Ann Trumm represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of March 15, 2020 through May 30, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period of March 1 2020 through May 30, 2020.

Whether the employer's account may be charged for benefits for the period of March 15, 2020 through May 30, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jodi Simon is employed by the Western Dubuque Community School District as a non-contract substitute teacher. Ms. Simon had worked for the District in the same capacity for many years. On an annual basis the District provides Ms. Simon with a substitute teacher information document that advises Ms. Simon that that there is not guarantee of hours and that being on the substitute teacher list does not guarantee work will be available. Ms. Simon performed substitute teaching duties for the District during the 2019-2020 academic year. Effective March 16, 2020, the District discontinued in-person pursuant to Governor's directive closing schools statewide to slow community spread of COVID-19. The latter part of the spring term usually provides Ms. Simon with ample substitute teaching opportunities. Ms. Simon had a

number of substitute teaching assignment dates that were cancelled due to the shutdown. Ms. Simon remained available to return to substitute teaching for the District. Ms. Simon has a 10-year-old child who could no longer attend classes due to the shutdown, but who would have returned to school if the school had reopened, freeing up Ms. Simon to continue to perform substitute teaching duties.

Ms. Simon established an original claim for benefits that was effective March 15, 2020. Western Dubuque Community School District is the sole base period employer. Ms. Simon made weekly claims for each of the weeks between March 15, 2020 and May 30, 2020, but then discontinued her claim. Ms. Simon received \$200.00 in regular benefits for each of the weeks between March 15, 2020 and May 30, 2020. Ms. Simon received \$600.00 Federal Pandemic Unemployment Compensation (FPUC) for each of the weeks between March 29, 2020 and May 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

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) 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.22(2)(i)(1) provides:

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.

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.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.19(38) 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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Ms. Simon did not meet the availability requirement during the period of March 15, 2020 through May 30, 2020 and is not eligible for regular state benefits for that period. Ms. Simon's base period wage credits are based entirely on on-call work. Ms. Simon's employment with the district consisted entirely of on-call work, with no guarantee that she would receive work hours. Because of the on-call base period wages and on-call employment, Ms. Simon cannot be deemed available for work or totally, temporarily, or partially unemployed within the meaning of the law. Regular state benefits are denied for the period of March 15, 2020 through May 30, 2020. Because the on-call nature of the employment did not change and because the employer took no steps to change the conditions of the employment, the employer's account shall not be charged for benefits for the period of March 15, 2020 through May 30, 2020.

This matter will be remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits the claimant received.

DECISION:

The July 16, 2020, reference 01, decision is reversed. The claimant is an on-call worker, did not meet the availability requirement, and was not totally, temporarily, or partially unemployed within the meaning of the law during the period of March 15, 2020 through May 30, 2020. The claimant is not eligible for regular state benefits for that period. The employer's account shall not be charged for benefits for that period.

This matter is **remanded** to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits the claimant received.



James E. Timberland
Administrative Law Judge

December 7, 2020
Decision Dated and Mailed

jet/mh

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**