

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY A SCHUMACHER
Claimant

NEW HAMPTON COMMUNITY SCHOOL
Employer

APPEAL 20A-UI-11927-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.22(2)(i)(1) – Eligibility – On-call workers
Iowa Admin. Code r. 871-24.22(2)(i)(3) – Eligibility – A&A – On-call workers, wage history

STATEMENT OF THE CASE:

Claimant filed an appeal from the September 18, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 1, 2020, at 2:30 p.m. Claimant participated with his attorney David Dutton. Employer did not participate. Claimant's Exhibits A and B were admitted. Official notice was taken of the administrative record. The administrative law judge took official notice of claimant's testimony in the hearing for Appeal 20A-UI-11926-AW-T.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is eligible for benefits between academic year or terms.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed as a Substitute Teacher with New Hampton Community School for approximately one and a half years. Claimant was on the substitute teaching list for the 2019/2020 school year. In March 2020, employer closed its schools due to Covid-19. The schools remained closed for the rest of the school year. Claimant removed himself from the substitute teaching list for the 2020/2021 school year upon the advice of his physician due to his health and Covid-19.

Claimant filed an initial claim for unemployment insurance benefits effective March 22, 2020. Claimant's base period runs from October 1, 2018 through September 30, 2019. All of claimant's base period wages were earned substitute teaching for various employers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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(1) and (3) provide:

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.

(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.

Iowa Admin. Code r. 871-24.52(10) provides:

Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2)"i"(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)“i”(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)“i”(3) if they are:

- (1) Able and available for work.
- (2) Making an earnest and active search for work each week.
- (3) Placing no restrictions on their employability.
- (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

The legislature has provided a specific rule that applies to substitute teachers; that rule holds that on-call workers, like substitute teachers, are not considered to be unemployed within the meaning of the law when their only base period wage credits were earned performing on-call work.

Because claimant was hired to work on-call or as needed and his base period wages consist entirely of on-call wages, he is not considered to be unemployed within the meaning of the law. Accordingly, benefits are denied.

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The September 18, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant is not considered unemployed because all of his base period wage credits were earned performing on-call work. Benefits are denied.



Adrienne C. Williamson
Administrative Law Judge
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December 9, 2020
Decision Dated and Mailed

acw/scn