

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JULIE M DENOUDEN**

Claimant

**APPEAL 21A-UI-02333-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMES COMMUNITY SCHOOL DIST**

Employer

**OC: 03/15/20**

**Claimant: Appellant (3R)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment  
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers  
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the December 21, 2020 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective October 18, 2020 as she was still employed at the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on March 4, 2021. The claimant participated personally. The employer, Ames Community School District, participated through witness Kristin Johnson. Claimant's Exhibits 1 through 7 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant able to and available for work?  
Is the claimant eligible for total or partial unemployment benefits?  
Is claimant employed for the same hours and wages?  
Is the employer's account subject to charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on September 5, 2019 as an on-call substitute teacher. She has not worked in any other capacity besides a substitute teacher. Claimant filed her original claim for unemployment insurance benefits funded by the State of Iowa effective March 15, 2020 when the COVID 19 pandemic closed this employer's school. Spring break for the employer was scheduled for March 15, 2020 through March 21, 2020.

The school opened for virtual learning from April 20, 2020 until the end of the 2019/2020 school year which occurred on June 2, 2020. The school reopened for the 2020/2021 school year on September 8, 2020 for student attendance but teachers were working prior to the first day of school.

Claimant worked a long term substitute teacher position for this employer beginning on August 25, 2020 and ending on October 16, 2020. When that substitute teaching position ended, she notified the school district that she no longer wanted to continue being a substitute teacher as it put her at risk for contracting COVID 19. See Exhibit 1.

Claimant's administrative records establish that her base period for wages included the following:

	2018/4	2019/1	2019/2	2019/3
Muscatine Community School District	\$4,738.00	\$4,794.00	\$7,007.00	\$3,428.00
Walmart Inc.	\$1,760.00	\$638.00	\$1,492.00	\$825.00
Muscatine Hayes-Elementary		\$127.00		
Ames Community School District				\$540.00

Claimant's established weekly benefit amount is \$386.00. Claimant reported her gross weekly-wages while working the long term substitute teacher position with this employer from August 23, 2020 through September 19, 2020. Claimant is currently not accepting substitute teaching positions due to the potential risk of developing COVID 19. Claimant's administrative records establish that she has not made any job contacts for the weeks in which she has filed her weekly-continued claims for benefits (excluding the week-ending October 31, 2020).

Claimant has received regular unemployment insurance benefits from March 15, 2020 through December 12, 2020. Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits, Lost Wages Assistance (LWA) payments, and Federal Pandemic Emergency Unemployment Compensation (PEUC) payments since March 15, 2020.

The issues of whether the claimant is monetarily eligible for unemployment insurance benefits based upon her non-educational wage credits, and whether the claimant has been able to work, available for work, and earnestly and actively searching for work from March 15, 2020 through October 17, 2020 will be remanded to the Benefits Bureau for an initial investigation and determination. The issue of whether the claimant had reasonable assurance during spring break from March 15, 2020 through March 21, 2020 and following the 2019/2020 school year will be remanded to the Benefits Bureau for an initial investigation and determination. The issue of whether claimant's separation from employment from this employer in October of 2020 is disqualifying will be remanded for an initial investigation and determination.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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. 871-24.52(10) Substitute teachers.

- a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contract, 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 to 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).

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 substitute teachers 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.

Typically, if the claimant has other base-period wages and that separation was not disqualifying, a claimant could be considered partially unemployed from the base period employer, and the lack of regular work with this on-call employer would be moot, except as to reporting wages. However, in this case, as of October 18, 2020, the claimant has not made herself able to and available for work and has not been earnestly and actively seeking work. As such, benefits are denied effective October 18, 2020 due to the claimant failing to establish that she is able to work, available for work, and earnestly and actively seeking work pursuant to Iowa Code § 96.4(3).

**DECISION:**

The December 21, 2020, (reference 02) unemployment insurance decision is modified in favor of the respondent. Claimant is an on-call substitute teacher with this employer and is therefore not considered unemployed when work is not available. Further, claimant has failed to establish that she is able to work, available for work and earnestly and actively seeking work effective October 18, 2020. Benefits are denied effective October 18, 2020.

**REMAND:**

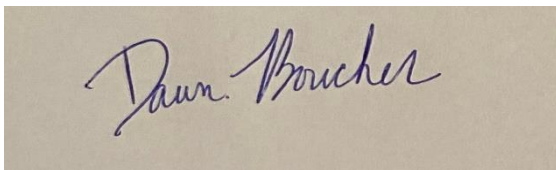
Claimant has other non-educational wages from Walmart Inc. in her base period. The matter of whether the claimant is monetarily eligible for unemployment insurance benefits based upon her wages from Walmart Inc. is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of whether the claimant was eligible for benefits effective March 15, 2020, including any resulting overpayment of benefits, due to the on-call nature of her substitute teaching position is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of whether the claimant has been able to and available for work, and earnestly and actively searching for work from March 15, 2020 through October 17, 2020, including any resulting overpayment of benefits, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of whether the claimant's separation from employment with this employer in October of 2020 is disqualifying is remanded to the Benefits Bureau for an initial investigation and determination.

The issue of whether the claimant had reasonable assurance for spring break from March 15, 2020 through March 21, 2020 and between academic years or terms when the 2019/2020 school term ended is remanded to the Benefits Bureau for an initial investigation and determination.



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Dawn Boucher  
Administrative Law Judge

March 9, 2021  
Decision Dated and Mailed

db/lj

**Note to Claimant**

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.