

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS POGMORE
Claimant

**WAPELLO COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 21A-UI-05551-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Wapello Community School District, the employer/appellant, filed an appeal from the February 10, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 26, 2021. The employer participated through Eric Small, business manager. Mr. Pogmore did not register for the hearing and did not participate.

ISSUES:

Is Mr. Pogmore able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Pogmore began working for the employer, a base period employer, on January 28, 2019. He worked as an on-call substitute teacher.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. The employer closed in-person school per the Governor's Proclamation effective March 16, 2020. The employer offered students virtually learning, which teachers and other full-time staff provided. The employer did not have work available for substitute teachers.

Mr. Pogmore has wages from five other employers in his base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Pogmore is not able to and available for work.

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)(2) 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.

(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."

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

Substitute teachers.

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).

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Mr. Pogmore was hired to work as a substitute teacher or as needed. His wage history consists of on-call wages from this employer and wages from five other employers. Mr. Pogmore did not participate in the hearing and did not establish that his wages from the other five employers are not on-call wages or that he is able to and available for work. It is Mr. Pogmore's burden to do so. Since Mr. Pogmore has not met his burden he is not eligible for regular, state-funded unemployment insurance benefits.

DECISION:

The February 10, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Pogmore has not established that he is able to and available for work. Benefits are denied effective March 15, 2020.



Daniel Zeno
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April 30, 2021
Decision Dated and Mailed

dz/ol