

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COURTNEY I SIMON
Claimant

**DUBUQUE COMMUNITY SCHOOL
DISTRICT**
Employer

**APPEAL 21A-UI-07122-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: Appellant (1)**

Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able to and available for work
Iowa Code § 96.7(2)(A)(2) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 4, 2021 unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2021. Claimant participated personally. Employer participated through Mindy Klein.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to work and available for work?
Is claimant still employed at the same hours and same wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 22, 2019 working full-time as a para-professional. Claimant's immediate supervisor was Casey Studer. Claimant's last day worked was March 13, 2020 when the school shut down for the school year. Claimant was paid her normal pay rate for her normal hours through the end of the school year. Claimant was off work between school years with the employer but returned to work August 14, 2020 working full-time since.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not totally or partially unemployed during the time in question.

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.

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. 871-24.23(26) provides:

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

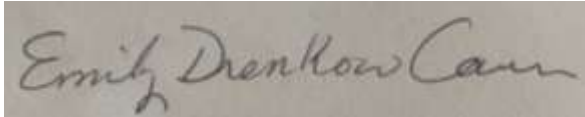
- (26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant was paid at her normal rate of a pay for her normal hours each week through the end of the school year by the employer. Starting August 14, 2021 claimant is and remains

employed by the employer. As such she was not totally or partially unemployed during these time periods.

DECISION:

The March 4, 2021 unemployment insurance decision is affirmed. Benefits are denied.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

June 03, 2021
Decision Dated and Mailed

ed/ol