

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN C HOLBROOK
Claimant

APPEAL 21A-EUCU-00049-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST CENTRAL VALLEY SCHOOLS
Employer

**OC: 04/05/20
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

The claimant/appellant, John C. Holbrook, filed an appeal from the March 3, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated he was ineligible for benefits effective April 5, 2020, due to a requested leave of absence. A telephone hearing was held on May 25, 2021. The claimant participated. The employer was represented by Symantha Crawford.

At the time of the hearing, both parties waived notice on the issues of whether claimant was able to and available for work, whether she was considered totally, temporarily or partially unemployed and employer chargeability. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to and available for work effective April 5, 2020?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established his claim for unemployment insurance benefits with an effective date of April 5, 2020. Claimant has worked as an on-call substitute teacher since 2019 for this employer. Claimant’s base period consists of educational institutional credits only. (Claimant also performs work as a substitute teacher for Panorama school district and Guthrie Center.)

On March 16, 2020, Governor Reynolds issued a proclamation closing K-12 school statewide due to the emerging COVID-19 pandemic. Claimant was unemployed due to the pandemic-related shutdown from March 15, 2020, through the week ending May 28, 2020, at which time her work for the school year would have ended otherwise. It was not the employer's voluntary choice to close its school in March 2020, nor was its claimant's voluntary choice to take a leave of absence from work. Due to the pandemic, there was simply no work available.

Claimant does not customarily work over the summer for this employer. When school resumed August 24, 2020, claimant notified employer that he would not accept assignments until he received the COVID-19 vaccine. Claimant cares for his elderly parents and did not want to expose them to COVID-19. Claimant cared for his parents both in Iowa and in Mesa, Arizona. Claimant did not accept any assignments for the fall term and remained in Arizona from December until March 2021. Upon being vaccinated, he resumed substitute teaching.

Claimant is listed as Group Code 6, which currently indicates that he is permanently unemployed. Under this group code, the employer is not relieved of any charges.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is eligible for unemployment insurance benefits for the period of April 5, 2020 through May 28, 2020 only.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Here, claimant was totally unemployed effective April 5, 2020, until May 28, 2020. This total unemployment was a result of Governor Reynolds closing Iowa's K-12 schools due to the COVID-19 pandemic. Benefits are allowed from April 5, 2020, until May 28, 2020, provided he is otherwise eligible. As claimant is classified as Group Code 6, the employer could be charged for these benefits.

The issue of whether claimant's group code should be changed to Group Code 8 (which reflects claimant's unemployment is pandemic related and relieves the employer of charges) is remanded the Benefits Bureau for review.

Iowa Code § 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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Claimant did not customarily work in summers for the employer and would not have expected employment over the summer for this employer. Therefore, he would not be considered unemployed from May 29, 2020 through the summer term.

Thereafter, claimant in this case determined it was in his family's best interest to restrict substitute teaching for the employer until he was vaccinated. The administrative law judge respects claimant's choice and understands the challenge of balancing professional versus personal obligations, but because employer had work available to claimant, and claimant self-restricted himself until vaccinated, he would not be considered able and available for work. Regular state benefits are denied effective May 20, 2020.

DECISION:

The March 3, 2021 (reference 04) unemployment insurance decision is modified in favor of appellant. Claimant was totally unemployed and was able to and available for work; benefits are allowed from April 5, 2020, until May 28, 2020, provided he is otherwise eligible. The employer may be charged for any benefits paid between April 5, 2020 until May 28, 2020. Effective May 29, 2020, claimant was not able and available for work. Therefore, benefits are denied.

REMAND:

The issue of whether claimant's group code should be changed to Group Code 8 is remanded the Benefits Bureau for review.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Fax 515-478-3528

June 7, 2021

Decision Dated and Mailed

jlb/kmj

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 unemployed or continue to be 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.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>