

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**AMY SCHMELZER**

Claimant

**APPEAL 20A-UI-04804-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COMMUNITY SCHOOL DIST**

Respondent

**OC: 03/22/20**

**Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Able and Available

Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment

Iowa Code § 96.7(2)a(2)(a) – Still Employed/Chargeability

Iowa Code § 96.4(5)c – Vacation Period/Holiday Recess

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

On May 28, 2020, Dubuque Community School District (employer/appellant) filed an appeal from the May 19, 2020 (reference 02) unemployment insurance decision that allowed benefits beginning with the benefit week ending March 28, 2020.

A telephone hearing was held on June 23, 2020. The parties were properly notified of the hearing. Employer participated by Payroll Specialist Mindy Klein. Amy Schmelzer (claimant/respondent) participated personally.

Official notice was taken of the administrative record.

**ISSUES:**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same wage and hours? Is the employer's account subject to charge?
- IV. Was the claimant overpaid benefits?
- V. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant has been employed by employer as a substitute teacher since March 16, 2018. Claimant is still employed in that position. Work was not available the week ending March 21, 2020, due to

spring break. Work was not available beginning with the week ending March 28, 2020, due to the pandemic. Work was not available beginning June 4, as the school year ended at that time.

Claimant's base period includes wages for work other than on-call work. Claimant reported wages earned for the benefit weeks ending March 28, 2020 through June 20, 2020, except for the benefit weeks ending May 2 and June 6, 2020. The wages reported were never more than her weekly benefit amount plus \$15.00.

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

For the reasons that follow, the May 19, 2020 (reference 02) unemployment insurance decision that allowed benefits is MODIFIED in favor of appellant. Benefits are allowed beginning the benefit week ending March 28, 2020, provided claimant is otherwise eligible. Employer's account is not subject to charge.

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 Admin. Code r. 871-24.22(2)i provides:

Benefit 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.

(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." An individual who is willing to accept only on-call work is not considered to be available for work.

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.

Claimant reported wages earned for the benefit weeks ending March 28, 2020 through June 20, 2020, except for the benefit weeks ending May 2 and June 6, 2020. The wages reported were never more than her weekly benefit amount plus \$15.00. Claimant was totally unemployed in the weeks she reported no wages, and partially unemployed in the other weeks.

Because there are wage credits in claimant's base period for work other than on-call work as a substitute teacher, claimant is considered available for work. Claimant is receiving the same employment from employer as during the base period, as claimant has always been in an on-call position with no guarantee of specific hours. As such, benefits paid to claimant shall not be charged against employer's account.

The other issues noticed need not be addressed.

**DECISION:**

The May 19, 2020 (reference 02) unemployment insurance decision that allowed benefits is MODIFIED in favor of appellant. Benefits are allowed from the benefit week ending March 28, 2020, provided claimant is otherwise eligible. Employer's account is not subject to charge.



---

Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

July 1, 2020  
Decision Dated and Mailed

abd/scn