

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALYSSA C JOHNSON**  
Claimant

**NORTH POLK COMMUNITY SCHOOL DIST**  
Employer

**APPEAL 21A-UI-07494-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20  
Claimant: Respondent (4R)**

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Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.4(5) – Reasonable Assurance  
Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements

**STATEMENT OF THE CASE:**

On March 15, 2021, the employer, North Polk Community School District, filed an appeal from the March 11, 2021 (reference 04) unemployment insurance decision that allowed benefits based upon a determination that claimant Alyssa C. Johnson was unemployed on a short-term layoff and was eligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Monday, May 24, 2021. The claimant, Alyssa C. Johnson, participated. The employer, North Polk Community School District, participated through Mary Ann Webb, Payroll Specialist. No exhibits were offered. The administrative law judge took official notice of claimant's wage records.

**ISSUES:**

Is the claimant unemployed?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed on call as a substitute teacher with the North Polk Community School District beginning January 9, 2017. Claimant remains employed in this capacity with the school district.

Claimant's wage records reflect that she works as a substitute teacher for three districts: North Polk; Ankeny Community School District; and Ballard Community School District. Claimant also works as a shift manager for GameStop during the summer, when no work is available for substitute teachers.

In March 2020, Governor Reynolds cancelled in-person classes for what ended up being the remainder of the school year because of the COVID 19 pandemic. Claimant had not served as a substitute teacher for the employer during the school year up until the point of the closure in

March. Employer did not have further work available for substitutes after in-person classes were cancelled. Employer did not pay claimant after in-person classes were cancelled.

Claimant remains on the substitute list for the 2020-2021 school year.

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

For the reasons that follow, the administrative law judge concludes may be eligible for unemployment insurance benefits based on wage credits from other employers. Wage credits based on wages earned with the North Polk Community School District should be removed from her base period.

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)(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 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa 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) "f"(3).

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 on-call status when work is not available as no regular hours were guaranteed.

Claimant has wages earned as a substitute teacher from other employers in her base period. This matter will be remanded for a determination of whether these wage credits should also be removed from her base period.

Claimant has some other, non-educational wages in her base period that could make her monetarily eligible for benefits. This matter will be remanded for a determination of whether claimant is eligible for unemployment insurance benefits based on those wage credits.

**DECISION:**

The March 11, 2021 (reference 04) unemployment insurance decision is modified in favor of employer North Polk Community School District. Claimant worked for the employer as a substitute teacher, and wage credits related to that employment must be removed from her base period.

**REMAND:**

The issues of (1) whether claimant has other on-call, substitute teacher wage credits in her base period that must be removed from her base period and (2) whether claimant is eligible for unemployment insurance benefits based on wage credits earned with employer GameStop are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.



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Elizabeth A. Johnson  
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June 3, 2021  
Decision Dated and Mailed

lj/scn