

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

OSAMA EBRAHEM
Claimant

APPEAL NO. 21A-UI-15626-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY COMMUNITY SCHOOL DIST
Employer

**OC: 06/13/21
Claimant: Respondent (2)**

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4-5 – Reasonable Assurance
Iowa Admin. Code r. 871-24.52(10) – Substitute Teacher
871 IA Admin. Code – 24.22(2)(I) – On Call Worker

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 8, 2021, reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on September 2, 2021. Employer participated by Lyndsee Detra. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is still employed at the same hours and wages?
Whether claimant is eligible to receive partial benefits?
Whether claimant is able and available for work?
Whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year?
Is claimant a substitute teacher?

FINDINGS OF FACT:

The claimant previously worked for Iowa City Community School District, a base period employer, as a substitute teacher. Claimant chose not to accept any positions as a substitute teacher for ICCSD during the 2020-2021 school year although there were positions available throughout the school year.

As claimant did not work at all during the previous school year, claimant was removed from the list of substitute teachers on or around June 3, 2021. At the time claimant filed for the new original claim year on June 13, 2021, he was no longer employed by the Iowa City Community School District.

The administrative record indicates that claimant as worked and earned wages from other employers during the previous claim year. The claimant worked for the University of Iowa

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed, and no charges shall be made to employer's account.

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 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. 871-24.23(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.

Iowa Code section 96.4(5)b provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Admin. Code r. 871-24.22(2)i(1) 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.

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.

Because the claimant did not participate in this matter, it is unknown if claimant is able and available to work after the date of his filing a new original claim on June 13, 2021. Benefits withheld until such time that claimant shows he is able and available for work. As employer was not an employer from whom claimant earned any wages during the base year or the current year and has thus been removed from employer's file, employer account shall not be charged for benefits received by claimant once he has established he is able and available for work.

DECISION:

The July 8, 2021, reference 02, decision is reversed. The claimant is not able and available for work, and benefits are denied. The account of the current part-time employer shall not be charged once claimant has shown his availability.



Blair A. Bennett
Administrative Law Judge

September 10, 2021
Decision Dated and Mailed

bab/mh