

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN D TABER

Claimant

APPEAL 21A-UI-02762-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMES COMMUNITY SCHOOL DIST

Employer

OC: 03/15/20

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 6, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective March 15, 2020 as she was still employed in her on-call job at the same capacity as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on March 11, 2021. The claimant participated personally. The employer, Ames Community School District, participated through witness Kristin Johnson. Claimant's Exhibits A, B, C, D, E, and F were admitted. Employer's Exhibits 1 and 2 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-02764-DB-T; 21A-UI-02767-DB-T; 21A-UI-02770-DB-T; 21A-UI-02773-DB-T; and 21A-UI-02776-DB-T.

ISSUES:

Is the claimant eligible for total, partial or temporary unemployment benefits?
Is the claimant an on-call substitute teacher?
Is claimant employed in the same capacity as her original contract of hire?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer in the Fall of 1998. She has worked as an on-call substitute teacher beginning on October 2, 2014 and continues to work for the employer in that same capacity. Claimant filed her original claim for unemployment insurance benefits effective March 15, 2020. Claimant's established weekly-benefit amount was \$180.00. Claimant filed an additional claim for benefits effective November 22, 2020. Claimant's administrative records establish that her base period included the following on-call wages with an educational institution:

	2018/4	2019/1	2019/2	2019/3
Ames Community School District	\$4,160.00	\$2,970.00	\$3,255.00	\$840.00

Claimant's administrative records establish that she filed weekly-continued claims for benefits for the following weeks and was paid the following amounts in regular unemployment insurance benefits:

Week-ending March 21, 2020	Paid \$180.00 in regular benefits
Week-ending March 28, 2020	Paid \$180.00 in regular benefits
Week-ending April 4, 2020	Paid \$180.00 in regular benefits
Week-ending April 11, 2020	Paid \$180.00 in regular benefits
Week-ending April 18, 2020	Paid \$180.00 in regular benefits
Week-ending April 25, 2020	Paid \$180.00 in regular benefits
Week-ending May 2, 2020	Paid \$180.00 in regular benefits
Week-ending May 9, 2020	Paid \$180.00 in regular benefits
Week-ending May 16, 2020	Paid \$180.00 in regular benefits
Week-ending May 23, 2020	Paid \$180.00 in regular benefits
Week-ending May 30, 2020	Paid \$180.00 in regular benefits
Week-ending June 6, 2020	Paid \$180.00 in regular benefits
Week-ending June 13, 2020	Paid \$180.00 in regular benefits
Week-ending June 20, 2020	Paid \$180.00 in regular benefits
Week-ending June 27, 2020	Paid \$180.00 in regular benefits
Week-ending July 4, 2020	Paid \$180.00 in regular benefits
Week-ending July 11, 2020	Paid \$180.00 in regular benefits
Week-ending July 18, 2020	Paid \$180.00 in regular benefits
Week-ending July 25, 2020	Paid \$180.00 in regular benefits
Week-ending August 1, 2020	Paid \$180.00 in regular benefits
Week-ending August 8, 2020	Paid \$141.67 in regular benefits
Week-ending August 15, 2020	Paid \$180.00 in PEUC benefits
Week-ending August 22, 2020	Paid \$180.00 in PEUC benefits
Week-ending August 29, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 5, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 12, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 19, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 26, 2020	Paid \$180.00 in PEUC benefits
Week-ending October 3, 2020	Paid \$180.00 in PEUC benefits
Week-ending November 21, 2020	Paid \$0.00
Week-ending November 28, 2020	Paid \$0.00
Week-ending December 5, 2020	Paid \$0.00

For the week-ending March 21, 2020, work was not available because the employer was on its customary spring break and the claimant had reasonable assurance to return after the customary break.

For the week-ending March 28, 2020 through the week-ending April 18, 2020, the school was completely closed during the COVID-19 pandemic and the claimant had no opportunity to work due to the closure.

The schools reopened in an online learning environment only for the remainder of the school year beginning the benefit week of April 19, 2020 through the end of the school year on June 2, 2020 (week-ending June 6, 2020). There were substitute teaching positions available while the school was operating in an online only learning environment, but the positions were limited due to the fact that regulations changed to allow a larger pool of participants to substitute teach and regular teachers could work from home.

Following the end of the 2019/2020 term, the claimant was sent an email communication that asked if she intended to be a substitute teacher for the 2020/2021 school year. Claimant

completed that form and indicated that she did intend to continue to be a substitute teacher for the upcoming 2020/2021 school year. From the week of June 7, 2020 through the week-ending August 22, 2020, the school was shut down due to its regular summer closure between academic years or terms.

The 2020/2021 school year was scheduled to begin on or about August 24 – 26, 2020, depending on the school; however, the schools did not reopen until September 8, 2020 and did so in an online learning environment only. See Exhibit A. Therefore, for the week beginning August 23, 2020 through the week-ending September 5, 2020, the schools were completely closed and there was no work available for the claimant as a substitute teacher.

Schools began the 2020/2021 school year in an online learning environment from September 8, 2020 through the week-ending September 19, 2020. There was work available to substitute teachers but it was again limited due to regular teachers being able to teach from home and the pool of substitute teachers being expanded due to changed regulations.

Schools were open in person from the week beginning September 20, 2020 through November 10, 2020. However, claimant was ill effective September 21, 2020 and was required to quarantine due to COVID-19 like symptoms through the week-ending October 3, 2020, so she did work due to quarantine during that period of time.

Claimant returned to work as a substitute teacher effective the week beginning October 4, 2020 through November 10, 2020. She worked 24 days during this time period. See Exhibit A.

On or about November 11, 12, and 16, 2020, the employer again transitioned to an online only learning environment through December 9, 2020. There were substitute positions available; however, they were limited again due to regular teachers being able to work from home and other persons being able to substitute teach.

Schools transitioned back to in person learning on December 9, 2020. Claimant has worked substitute teaching assignments since December 9, 2020.

Claimant's administrative records establish that she was paid regular unemployment insurance benefits of \$3,741.67 from March 15, 2020 through August 8, 2020. Claimant was paid Lost Wages Assistance (LWA) benefits of \$1,800.00 from July 26, 2020 through September 5, 2020. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits of \$10,200.00 from March 29, 2020 through July 25, 2020. Claimant was paid Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$1,440.00 from August 9, 2020 through October 3, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 96.1A(37) 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. 871-24.52(10) Substitute teachers.

- a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contract, reasonable assurance provisions and the benefit denials between terms and during vacation periods.
- b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2)"i"(1).
- 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)"i"(3).
- d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)"i"(3) if they are:
 - (1) Able to and available for work.
 - (2) Making an earnest and active search for work each week.
 - (3) Placing no restrictions on their employability.
 - (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.
- e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

(emphasis added).

The legislature has provided a specific rule that applies to substitute teachers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. 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 sporadic availability of available work as no regular hours are guaranteed. Claimant has only on-call wages from an education institution in her base period. However, if a school is completely closed during a period of time that is not between academic years or terms (or customary breaks), then there is no work available to the claimant and it is considered a temporary layoff due to lack of work or emergency and regular unemployment insurance benefits would be allowed for that period of time.

As such, the claimant is denied regular unemployment insurance benefits funded by the State of Iowa due to reasonable assurance during the schools customary spring break period from March 15, 2020 through March 21, 2020. See Appeal No. 21A-UI-02767-DB-T.

From March 22, 2020 through the week-ending April 18, 2020, the school was completely closed and there was no work available. As such, regular unemployment insurance benefits are allowed from March 22, 2020 through the week-ending April 18, 2020 due to a temporary layoff.

From April 19, 2020 through the week-ending June 6, 2020, the school was open but in an online learning capacity only. While substitute teaching jobs were limited due to the fact that regular teachers could work from home; there were still jobs available, as needed. Because of the nature of the claimant's "on-call" work and the fact that no work is guaranteed to her in her "on-call" position, regular unemployment insurance benefits funded by the State of Iowa are denied from April 19, 2020 through June 6, 2020 as she was not working due to the "on-call" nature of her position.

From the week beginning June 7, 2020 through August 22, 2020, the school was closed due to its regular and normal summer closure. Claimant had reasonable assurance to return as a substitute teacher in the 2020/2021 school year. See Appeal No. 21A-UI-02767-DB-T. As such, benefits are denied from June 7, 2020 through August 22, 2020.

From the week beginning August 23, 2020 through the week-ending September 5, 2020, the school was closed, but not for its customary break period. There was no opportunity for the claimant to work due to the closure. As such, claimant was temporary unemployed from August 23, 2020 through September 5, 2020 due to lack of work and/or emergency. Regular unemployment insurance benefits are allowed from August 23, 2020 through September 5, 2020.

From September 6, 2020 through the week-ending September 19, 2020, the school was operating in an online learning environment. Substitute teaching positions were still available, but were limited. As such, the claimant was not working due to the nature of her "on-call" position and not due to school closure. Regular unemployment insurance benefits are denied from September 6, 2020 through the week-ending September 19, 2020.

From September 20, 2020 through the week-ending October 3, 2020, the school was back to an in person learning environment; however, the claimant was experiencing COVID-19 like symptoms and was required to quarantine by the school district until the week-ending October 3, 2020. Claimant was not working due to her quarantine; therefore, she was not able to and available for work pursuant to Iowa Code § 96.4(3) and regular unemployment insurance benefits are denied during that period of time.

From the week-beginning November 15, 2020 through the week-ending December 5, 2020, the school transitioned back to an online learning environment. While there were substitute teaching positions available, they were limited due to regular teachers being able to work from home and other persons being allowed to substitute teach pursuant to new regulations. From November 15, 2020 through December 5, 2020 the claimant was not working due to the nature of her "on-call" position and not due to school closure. Therefore, regular unemployment insurance benefits are denied from November 15, 2020 through December 5, 2020.

DECISION:

The January 6, 2021 (reference 01) decision is modified in favor of the appellant. Regular unemployment insurance benefits are denied from March 15, 2020 through March 21, 2020.

Regular unemployment insurance benefits are **allowed** from March 22, 2020 through April 18, 2020 as the claimant was temporarily laid off due to lack of work.

Regular unemployment insurance benefits are denied from April 19, 2020 through June 6, 2020 due to the claimant being still employed in the same capacity as her original contract of hire in her on-call job.

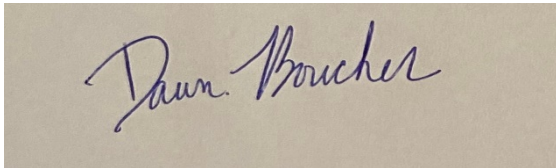
Regular unemployment insurance benefits are denied from June 7, 2020 through August 22, 2020 due to reasonable assurance.

Regular unemployment insurance benefits are **allowed** from August 23, 2020 through September 5, 2020 as the claimant was temporarily laid off due to lack of work.

Regular unemployment insurance benefits are denied from September 6, 2020 through September 19, 2020 due to the claimant being still employed in the same capacity as her original contract of hire in her on-call job.

Regular unemployment insurance benefits are denied from September 20, 2020 through October 3, 2020 due to the claimant not being able to and available for work pursuant to Iowa Code § 96.4(3).

Regular unemployment insurance benefits are denied from November 15, 2020 through December 5, 2020 due to the claimant being still employed in the same capacity as her original contract of hire in her on-call job.



Dawn Boucher
Administrative Law Judge

March 31, 2021
Decision Dated and Mailed

db/kmj