

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA L. HISE
Claimant

PANORAMA COMMUNITY SCHOOL
Employer

APPEAL 22A-UI-01497-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.7(2)a(2)– Same Base Period Employment
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Admin. Code R. 871-24.52(10)-Substitute Teachers
Iowa Code § 96.1A(37)-Total and Partial Unemployment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On December 21, 2021, the claimant/appellant filed an appeal from the December 20, 2021, (reference 06) unemployment insurance decision that denied benefits based on a determination claimant is still employed in on-call job as original contract of hire. Benefits denied as of April 5, 2020. The parties were properly notified about the hearing. A telephone hearing was held on February 8, 2022. Claimant participated at the hearing. Employer participated through Business Manager, Symantha Crawford. Exhibit A was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records, including NMRO.

ISSUES:

Does the claimant meet the definition of being considered partially, totally, or temporarily, unemployed?

Is the claimant an on-call worker?

Is the claimant able to work and available for work?

Is the Claimant eligible for benefits between academic years?

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: The unemployment insurance decision was mailed to the appellant's address of record on December 8, 2021. The appellant did not receive the decision. The claimant first became aware of the disqualification decision on December 21, 2021, when she called Iowa Workforce Development (IWD) to discuss the overpayment decisions she received. The appeal was sent the same day that she was notified of the decision.

Claimant began working for employer on October 8, 2019, as an on-call substitute teacher. Claimant last worked for the employer on November 1, 2019. In February 2020 claimant notified the employer that she wanted to be taken off of the substitute teaching list. Claimant obtained a full time job with Imagine the Possibilities Inc. Claimant began her full time job with employer Imagine the Possibilities Inc. The issue of claimant's separation from the employer has not been determined by the benefits bureau.

On February 23, 2020, claimant started a full time job with the employer Imagine the Possibilities Inc. On April 5, 2020, claimant filed for benefits due to her employment with Imagine the Possibilities Inc. She filed for and reported wages earned with that employer while filing her claim for benefits from April 5, 2020 through June 27, 2020. The issue of whether claimant was partially, totally, or temporarily unemployed beginning April 5, 2020 through June 27, 2020, has not been determined by the benefits bureau.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists.

See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is partially, totally, or temporarily unemployed. For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed with the employer effective April 5, 2020.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code § 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.

i. On-call workers.

(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.

Iowa Admin. Code r. 871-24.52(10) states: Substitute teachers.

- a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, 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 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).

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.1A(37). Total and temporary unemployment occur when an individual does not work or earn wages in any given week. However, temporary employment occurs when the employer does not have work for the claimant and the unemployment lasts for fewer than four consecutive weeks. Partial unemployment occurs when a person works and earns wages less than their weekly benefit amount plus fifteen dollars.

In this case, the claimant was totally unemployed from this employer when she filed her claim for unemployment insurance benefits. While the wages earned during her base period were for on-call work, by accepting full-time employment the claimant has not placed restrictions on her employability, indicating she is still attached to the job market. Claimant did not earn wages from the employer and performed no work from the employer after November 1, 2019. The administrative law judge finds that claimant is totally unemployed from the employer effective April 5, 2020.

The claimant did report wages earned with a subsequent employer while filing her claim for unemployment insurance benefits. Whether the claimant was partially unemployed with Imagine the Possibilities Inc. effective April 5, 2020, is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision issued to both parties with appeal rights.

Since the claimant separated from the employer prior to filing her claim for benefits, the issue of reasonable assurance is moot.

The next issue that must be determined is if the employer's account is subject to charge for the claimant's benefits.

Iowa Code § 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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

The claimant is not receiving the same employment from the employer that the individual received during her base period. As a result, the employers account is subject to charge unless the claimant's separation is disqualifying, or she has requalified for benefits since the separation.

Whether the claimant's separation from the employer qualifies her for benefits and whether she has requalified since the separation are remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

Claimant's appeal is timely.

The December 8, 2021, (reference 06) unemployment insurance decision is reversed. The claimant is totally unemployed and benefits are allowed, provided she is otherwise eligible. The employer's account is subject to charge unless the claimant's separation is disqualifying or she has requalified for benefits since the separation.

REMAND:

Claimant's separation from the employer is remanded to the Benefits Bureau for an initial investigation and determination.

The issue of whether claimant is partially, totally, or temporarily unemployed with employer Imagine the Possibilities Inc. effective April 5, 2020, through June 27, 2020, is remanded to the Benefits Bureau for an initial investigation and determination.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 28, 2022
Decision Dated and Mailed

cs/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.