

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SUSAN LAWLER

Claimant

APPEAL NO. 21A-UI-05776-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMES COMMUNITY SCHOOL DISTRICT

Employer

OC: 03/08/20

Claimant: Respondent (2R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 17, 2021, reference 01, decision that allowed benefits to the claimant for the period beginning March 8, 2020, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on May 12, 2021. Claimant, Susan Lawler, participated and presented additional testimony through Brad Lawler. Kristin Johnson represented the employer. There were three matters set for a consolidated hearing: 21A-UI-05776-JTT, 21A-UI-06654-JTT and 21A-UI-06661-JTT. Exhibits 1, 5 through 9, 11, 12, 13, 19 through 23, and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, DBIN, WAGE-A and WAGE-B. The administrative law judge also took official notice that the claimant did not apply for and was not approved for Pandemic Unemployment Assistance (PUA) benefits.

ISSUES:

Whether the claimant was able to work and available for work during the period beginning March 8, 2020 through April 4, 2020.

FINDINGS OF FACT:

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

In 2005, the claimant retired from her long-term employment as a contracted teacher with the Ames Community School District. In 2006, the claimant returned to the District as a substitute teacher at Ames High School. The claimant continued to perform substitute teaching at Ames High School during the 2019-2020 academic year. The claimant's individual teaching assignments lasted a few days or less. The claimant did not perform work for the District during academic breaks. Ames Community School District has at all relevant times been the claimant's sole employer.

The District has a few primary ways in which the District makes substitute teachers aware of substitute teaching opportunities. The District uses an online notification system, Frontline, that

employees can access remotely. Substitute teachers can elect to receive automated phone calls via Frontline regarding substitute teaching opportunities. Substitute teachers can also download a Frontline mobile application that provides alerts regarding substitute teaching opportunities. The claimant elected to receive telephonic notice of substitute teaching opportunities. Because the claimant had only signed up to teach at the high school, the claimant would only get notice if there was a substitute teaching opportunity at the high school. As a substitute teacher, the claimant could choose whether to accept or reject proposed substitute teaching assignments.

Based on the claimant's long relationship with the high school, teachers would sometimes contact the claimant directly to arrange to have the claimant substitute teach.

The claimant performed substitute teaching at Ames High School during the 2019-2020 academic year. The work paid \$120.00 per day. The District's scheduled spring break for the 2019-2020 academic year was set for the week of March 16-20, 2020. Classes were scheduled to resume on Monday, March 23, 2020.

The District did not resume classes on March 23, 2020. Instead, and in response to a state directive, the District closed for in-person classes to slow community spread of COVID-19. No one from the District contacted the claimant. The claimant was scheduled to substitute teach on March 23, 2020, but that teaching assignment was cancelled in connection with the District's temporary shutdown.

The District remained entirely closed for classes until April 20, 2020, at which time, the District implemented a remote/virtual learning curriculum. The District did not have substitute teaching opportunities available to the claimant for the remainder of the academic year.

The 2019-2020 academic year ended on Tuesday, June 2, 2020. Prior to the academic year coming to an end, the employer did not contact the claimant to assure continued work as a substitute teacher during the 2020-2021 academic year.

On July 7, 2020, the District sent a broadcast email to survey substitute teachers on the substitute teaching roster regarding whether they would be returning to substitute teach during the 2020-2021 academic year or would be limiting their availability. The District had not previously sent such surveys. On July 7, 2020, the claimant responded that she would be available to substitute teach at the high school.

On July 22, 2020, the District sent an email message to substitute teachers asking them to sign up in the Frontline system to accept substitute teaching positions for the 2020-2021 academic year. On July 22, 2020, the claimant signed up in Frontline for substitute teaching opportunities at the high school. The employer deems this contact on July 22, 2020 to be "reasonable assurance" of continued employment.

During much of the summer break, there had been uncertainty regarding the approach the District would take regarding students' return to classes at the start of the 2020-2021 academic year. The school board wrestled with how to ensure student and staff safety.

The District ultimately decided on a phased-in hybrid approach, whereby students attended in-person classes during part of the school week and participated in remote learning for the remainder of the school week.

The start of the 2020-2021 academic year was delayed to September 8, 2020. Prior to that date, the District trained substitute teachers commencing long-term substitute assignments in the hybrid curriculum. The District delayed providing this training to the claimant.

Between August 28, 2020 and November 3, 2020, the District contacted the claimant by telephone for 24 separate substitute teaching assignments, all of which the claimant declined. The claimant was concerned about being exposed to COVID-19 and was not ready to return to substitute teaching duties during that time.

The claimant first accepted and started a substitute teaching assignment on November 4, 2020. The assignment was for three days. That teaching assignment was arranged through direct contact between the claimant a representative of the high school, rather than through the Frontline system. The claimant thereafter performed work in additional substitute teaching assignments. The short-term assignments paid \$125.00. The long-term assignments late in the academic year paid \$175.00 per day.

The claimant established an original claim for benefits that Iowa Workforce Development deemed effective March 8, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$117.00. Ames Community School District is the sole base period employer. All of the base period wages derive from substitute teaching.

The claimant has provided a medical note, dated March 10, 2020. The note states the claimant suffers from an autoimmune disorder and was advised by her doctor not to travel.

The claimant made weekly claims for each of the weeks between March 8, 2020 and May 1, 2021. The present matter concerns the benefit year that began March 8, 2020 and that ended on March 6, 2021. For the week that ended March 14, 2020, the claimant reported \$120.00 in wages. For each of the weeks between March 15, 2020 and October 31, 2020, the claimant reported zero wages. The claimant received regular benefits for each of the weeks between March 8, 2020 and August 5, 2020, at which time the claimant reached her \$2,391.00 maximum benefit amount for regular benefits. The claimant also received Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the weeks between March 29, 2020 and July 25, 2020. The claimant received Lost Wages Assistance Payments (LWAP) for the weeks that ended August 1 and August 8, 2020.

The claimant continued to make weekly claims for the period beginning November 1, 2020 through the March 6, 2021 end of the benefit year. For all but five of those weeks, the claimant reported wages that exceeded her weekly benefit amount by more than \$15.00. For the weeks that ended November 21, November 28, December 5, December 26, and January 2, 2021, the claimant reported zero wages. The three out of four of these weeks corresponded to academic breaks.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.22(2) 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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

(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 96.1A(37)"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 96.1A(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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

Because Appeal Number 21A-UI-06654-JTT addresses the availability issue for the period beginning April 5, 2020, the present appeal number concerns only the period of March 8, 2020 through April 4, 2020. The claimant's base period wages credits derive exclusively from part-time on-call employment. The claimant elected to restrict her availability for work not only to substitute teaching for one District, but further restricted her availability to substitute teaching at one school in that district. For these reasons, the claimant was not unemployed within the meaning of the law during the period of March 8, 2020 through April 5, 2020, and did not meet the availability requirement during that period. Benefits are denied for the period of March 8, 2020 through April 5, 2020.

DECISION:

The February 17, 2021, reference 01, decision is reversed. Because Appeal Number 21A-UI-06654-JTT addresses the availability issue for the period beginning April 5, 2020, the present appeal number concerns only the period of March 8, 2020 through April 4, 2020. The claimant was not unemployed within the meaning of the law during the period of March 8, 2020 through April 5, 2020, and did not meet the availability requirement during that period. Benefits are denied for the period of March 8, 2020 through April 5, 2020.

This matter is **remanded** to the Benefits Bureau for entry of overpayment decisions regarding the benefits the claimant received for the period of March 8, 2020 through April 4, 2020.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

September 16, 2021
Decision Dated and Mailed

jet/scn