

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN R HOYMAN
Claimant

INDIANOLA COMMUNITY SCHOOL DIST
Employer

APPEAL NO. 21A-UI-05934-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 23, 2021, reference 01, decision that allowed benefits to the claimant effective March 22, 2021, 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 April 30, 2021. Claimant, John Hoyman, participated. Shelley Royer, Assistant Business Manager, represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the two-week period of March 22, 2020 through April 4, 2020.

Whether the claimant was partially and/or temporarily unemployed for the two-week period of March 22, 2020 through April 4, 2020.

Whether this employer's account may be charged for benefits.

FINDINGS OF FACT:

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

On February 18, 2019, the claimant commenced employment with the Indianola Community Scholl District as substitute teacher. The claimant last performed work for the District on March 13, 2020. The claimant understood at all relevant times that the District provided substitute teachers with no guarantee there would be work available. The claimant worked in one-day assignments as needed, but sometimes agreed to work up to five consecutive one-day assignment. The place of the assignment would change each day. The claimant's particular substitute teacher licensure limited him to working in assignments no longer than five days. The employer uses an automated software application to alert substitute teachers on its roster of available substitute teaching opportunities. Substitute teachers can sign up to receive automated text messages or may log into the system to review available substitute teaching assignments. In some instances, a school principal may call the substitute directly. The

claimant had signed up to substitute teach at all of the District's schools. The claimant's supervisor during any teaching was the principal of the school where he was teaching.

During the week of March 15 through March 21, 2020, the District was on spring break.

The District did not reopen for in-person classes after spring break, but instead remained closed to prevent community spread of COVID-19. No one contacted the claimant to discuss with him the impact of the school closure on his employment or the prospect of receiving additional substitute teaching assignments. The employer did not provide the claimant any compensation beyond paying him his usual wages for work he performed through March 13, 2020. The employer did not provide any additional substitute teaching assignments for the remainder of the year.

Neither the claimant nor the employer witness knows for certain whether the claimant had accepted substitute teaching assignments for the period after spring break that were cancelled due to the school closure.

The claimant established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$449.00. The claimant made a weekly claim for the week that ended March 28 and April 4, 2020. The claimant remained able to work and available for work during each of those weeks. For each week, the claimant reported zero wages and received \$449.00 in regular benefits. The claimant also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of those two weeks. The claimant discontinued his claim after the week that ended April 4, 2020 because he had accepted new employment at Capital City Fruit Company.

The claimant's base period for purposes of the claim year that started on March 22, 2020 consists of the fourth quarter of 2018 and the first, second and third quarter of 2019. The claimant's base period employers and base period quarterly wages were as follows:

EMPLOYER	ACCT-LOC	2018/4	2019/1	2019/2	2019/3
4 SEASONS FUNDRAISING INC	088147-000	2143			
KOHL'S DEPARTMENT STORES	241713-000	742			
JAKE'S LAWN AND LANDSCAPE	369145-000	3838	2793	6086	1408
INDIANOLA COMMUNITY SCHOO	103679-000			3360	480

The claimant's more recent quarterly wages include the following:

EMPLOYER	ACCT-LOC	2019/4	2020/1	2020/2
4 SEASONS FUNDRAISING INC	088147-000	3334		
INDIANOLA COMMUNITY SCHOO	103679-000	3660	2880	600
JAKE'S LAWN AND LANDSCAPE	369145-000		1043	
CAPITAL CITY FRUIT CO.	017613-000			6794

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 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).

The weight of the evidence in the record establishes that the claimant was physically and mentally able to work and available for work during the two-week period of March 22, 2020 through April 4, 2020. The evidence does not establish that the claimant was temporarily laid off by the Indianola Community School District. As a substitute teacher whose license restricted him to short-term on-call teaching assignments the claimant had no guaranteed of work hours. Accordingly, the absence teaching assignment during the week of spring break or the week after when the District was closed to in-person classes did not involve any change in the conditions of the part-time on-call substitute teaching employment. Accordingly, the District's account shall not be charged for benefits paid to the claimant for the two-week period of March 22, 2020 through April 4, 2020. The claimant remains eligible for benefits for the two-week period of March 22, 2020 through April 4, 2020, based on wages from other base period employment, provided he meets all other eligibility requirements.

In light of the able and available determination, the administrative law judge concludes consideration of the between academic terms disqualification issue to be unnecessary. The between academic issues was not part of the decision from which the employer appealed.

DECISION:

The February 23, 2021, reference 01, decision is modified as follows. The claimant was able to work and available for work during the two-week period of March 22, 2020 through April 4, 2020. The employer did not temporarily layoff the claimant from the part-time on-call substitute teaching employment. This employer's account shall not be charged for benefits paid to the claimant for the two-week period of March 22, 2020 through April 4, 2020. The claimant remains eligible for benefits for the two-week period of March 22, 2020 through April 4, 2020, based on wages from other base period employment, provided he meets all other eligibility requirements.



James E. Timberland
Administrative Law Judge

July 19, 2021
Decision Dated and Mailed

jet/scn