

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACQUELYN M DEWATER

Claimant

DES MOINES IND COMMUNITY SCH DIST

Employer

APPEAL NO. 21A-UI-07335-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20

Claimant: Respondent (2R)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 9, 2021, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on May 20, 2021. Claimant participated personally. Employer participated by Rhonda Wagoner and Nicole Wichman. 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 has not worked any hours for employer since October 15, 2019. Up until that time, claimant worked occasionally as a substitute nurse for employer. Claimant also had other part time jobs with Mercy Hospital and, employer believed, with the West Des Moines school district.

Since October of 2019 claimant asked to continue on the substitute nurses list although he did not pick up any shifts over the next year. Claimant asked to resign from this list on December 30, 2020.

Claimant applied for unemployment benefits on March 8, 2020. Claimant continued to have earnings from Catholic Health Initiatives throughout the time she filed for benefits, although her wages were not included on her weekly reports of wages.

Claimant in this matter did not participate in the hearing, and the administrative law judge has received no testimony as to the regularity of any of claimant's jobs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

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.

As the claimant did not participate in the hearing, it is not known why or how the claimant continued to earn wages while she filed for and received unemployment benefits. The wages earned do appear to be from claimant's highest paying job. Therefore, claimant was not separated from her regular job and is not afforded benefits available to those separated from a regular job that continues to be employed through a supplemental job. Absent this support, claimant is not eligible for partial or temporary unemployment benefits as per this employer. Benefits are denied.

DECISION:

The March 9, 2020, reference 01, decision is reversed. The claimant is not partially unemployed and benefits are denied.

This matter will be remanded to the benefits bureau for further examination of benefits received.



Blair A. Bennett
Administrative Law Judge

May 28, 2021
Decision Dated and Mailed

bab/ol