

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**BEATRICE B CLUPPER
7324 MAPLE DR
URBANDALE IA 50322**

**URBANDALE COMMUNITY SCHOOL
DISTRICT
ATTN SECRETARY
6200 AURORA STE 500 W
URBANDALE IA 50322**

**DARWIN CLUPPER
ATTORNEY AT LAW
7324 MAPLE DR
URBANDALE IA 50322**

**Appeal Number: 06A-UI-02475-RT
OC: 01/29/06 R: 02
Claimant: Appellant (4)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.7-2-a-2 – Employer Contributions and Reimbursements (Same Employment - Benefits not Charged)

STATEMENT OF THE CASE:

The claimant, Beatrice B. Clupper, filed a timely appeal from an unemployment insurance decision dated February 21, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on March 16, 2006, with the claimant participating. The claimant was represented by Darwin Clupper, Attorney at Law. Deb Boston, Administrative Assistant/Payroll, participated in the hearing for the employer, Urbandale Community School District. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This

appeal was consolidated with appeal number 06A-UI-02476-RT for the purposes of the hearing with the consent of the parties.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was laid off for a lack of work from two prior employers. After that time the claimant began accepting substitute teaching jobs. The claimant was placed on the substitute teacher list for the employer herein, Urbandale Community School District, and substituted one day in the fourth quarter of 2005 and three days so far in the first quarter of 2006. At all material times hereto the claimant's employment with the employer herein, Urbandale Community School District, was part-time, on-call, as-needed, as a substitute teacher and the claimant remained so employed and this has never changed. The claimant filed for unemployment insurance benefits effective January 29, 2006. Thereafter, the claimant has placed no physical or training restrictions on her ability to work and has further placed no time or day or location restrictions on her availability for work. The claimant is approved by Iowa Workforce Development to conduct an earnest and active search for work by sending out résumés. The claimant has sent out at least two résumés each week. The claimant is seeking full-time employment and is only accepting substitute teaching jobs until she can locate full-time employment. The claimant is otherwise monetarily eligible to receive unemployment insurance benefits as a result of wages earned by her two previous employers, Grandview College and the University of Phoenix.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times, she is, and was, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for those reasons.
2. Whether the employer should be relieved of any charges for unemployment insurance benefits to which the claimant is entitled because the claimant is receiving the same employment from the employer and the same hours and wages and terms and conditions as she did previously. The claimant is receiving the same employment from the employer and the employer should be relieved of any charges for any unemployment insurance benefits to which the claimant is entitled.

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".

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that, at relevant times, she is, and was, able, available, and earnestly and actively seeking work. The claimant credibly testified that she has placed no physical or training restrictions on her ability to work and has further placed no day or time or location restrictions on her availability for work. The claimant also credibly testified, and Iowa Workforce Development records confirm, that she is approved to submit résumés for employment opportunities rather than make in-person job contacts. The claimant credibly testified that she is sending out at least two résumés each week. Finally, the claimant credibly testified that although she is accepting substitute teaching work part-time, on-call, as-needed, she is only doing so until she can find full-time employment. The administrative law judge concludes that the claimant's part-time, on-call, as-needed, substitute teaching does not unreasonably interfere with her opportunity to obtain employment. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits. The administrative law judge notes that the claimant is neither temporarily unemployed or partially unemployed as defined by Iowa Code section 96.19(38)(b)(c) so as to excuse her from the requirements that she be able, available, and earnestly and actively seeking work. The administrative law judge further notes that the claimant has not been approved for Department (Director) Approved Training and is not excused from the requirements that she be able, available, and earnestly and actively seeking work for that reason. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise entitled to such benefits and remains able, available, and earnestly and actively seeking work.

Iowa Code Section 96.7-2-a(2) 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.

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.

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.

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.

The administrative law judge concludes that the claimant is receiving the same employment from the employer herein, Urbandale Community School District, including the same hours and wages and terms and conditions, as she did previously. Although the employer is not a base period employer, the administrative law judge nevertheless concludes that because the claimant is receiving the same employment that she has always received from the employer that the employer should be relieved of any charges for unemployment insurance benefits to which the claimant is entitled, in addition to a relief of such charges because the employer is not a base period employer.

DECISION:

The representative's decision of February 21, 2006, reference 01, is modified. The claimant, Beatrice B. Clupper, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she is able, available, and earnestly and actively seeking work. Any unemployment insurance benefits to which the claimant is entitled shall not be charged against the account of the employer herein, Urbandale Community School District, and the account of the employer herein shall be relieved of any such charges because the employer is not a base period employer and because the claimant is receiving the same employment including hours and wages and terms and conditions from the employer as she always had.

cs/s