

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

IMMANUEL W PAH
Claimant

APPEAL 21A-UI-16451-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAUKEE COMMUNITY SCHOOL DISTRICT
Employer

**OC: 04/12/20
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Totally, Partially or Temporarily Unemployed
Iowa Admin. Code 871-24.23(26) - Same Hours or Wages

STATEMENT OF THE CASE:

On July 24, 2021, claimant/appellant filed an appeal from the July 14, 2021, (reference 06) unemployment insurance decision that concluded claimant was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for 11:00 a.m. on September 17, 2021. The claimant participated personally. The employer, Waukee Community School District, did not participate. No exhibits were offered or admitted.

ISSUE:

Was the claimant able to and available for work?
Was the claimant totally, partially, or temporarily unemployed?
Was the claimant still employed with the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Waukee Community School District, employer, on August 20, 2019. Claimant worked as a part-time associate / paraprofessional. Claimant was never guaranteed a minimum amount of hours per week. Claimant worked 6 hours a day while school was in session. Claimant did not work during the summer break or the winter break.

Claimant continues to work 6 hours a day. Claimant did not work while the schools were shut down due to the COVID-19 pandemic in the Spring of 2020. Claimant did not apply for Pandemic Unemployment Assistance (PUA) benefits for that period. Claimant returned to work in the Fall of 2020 per his usual schedule. Claimant has continued to work that schedule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be totally or 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 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has

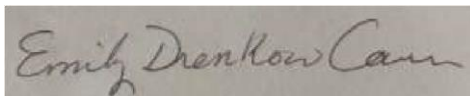
received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week he is claiming benefits. He is not totally unemployed.

The next question is whether he was partially unemployed prior to separating with this employer. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position with fluctuating hours. He has worked part-time hours during her base period and her hours have fluctuated as was the expectation when he was hired. He continued to work for employer on a part-time basis after filing this claim. As the claimant continued working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has he had any weeks of total unemployment during the relevant time period, the issue of his availability for work is moot and will not be discussed further in this decision.

DECISION:

The July 14, 2021, (reference 06) unemployment insurance decision denying benefits is affirmed. The claimant was not partially unemployed from the effective date of his claim. Benefits are denied. The issue of whether the claimant was available for work is moot as claimant is not eligible for benefits.



Emily Drenkow Carr
Administrative Law Judge
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September 23, 2021
Decision Dated and Mailed

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