

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KYLIE N ANDERSON**  
Claimant

**APPEAL 21A-UI-05994-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMES COMMUNITY SCHOOL DIST**  
Employer

**OC: 04/05/20**  
**Claimant: Respondent (3)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19 (38) – Total, Partial, Temporary Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.23(26) – Able and Available, Part-time Same Hours and Wages

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the February 23, 2021 (reference 02) unemployment insurance decision that concluded the claimant was eligible for benefits effective May 24, 2020 due to a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on April 29, 2021. The claimant did not participate. The employer participated through witness Kristin Johnson. Employer's Exhibits 1 through 4 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant eligible for total, partial, or temporary unemployment?  
Is the claimant able to and available for work?  
Is the employer's account subject to charges?  
Is the claimant employed at the same hours and wages as her original contract of hire?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with this employer on November 6, 2019. She works as an on-call substitute educational assistant and is not guaranteed a certain number of hours per week, due to her on-call status.

On March 23, 2020, the employer's schools closed due to the COVID-19 pandemic. The schools re-opened in a virtual learning environment only on April 20, 2020 and continued in that mode of education until the end of the 2019/2020 school year on June 2, 2020.

No job assignments were available to the claimant from March 23, 2020 through April 20, 2020 as all of the employer's schools were closed due to the COVID-19 pandemic. Assignments for on-call substitute staff were available from April 20, 2020 through the end of the school year on June 2, 2020.

Claimant's administrative records establish that she filed her claim for unemployment insurance benefits effective April 5, 2020 and filed weekly-continued claims through May 9, 2020. Claimant's administrative records establish the following base period wages:

Employer	2019/1	2019/2	2019/3	2019/4
MAINSTREAM LIVING INC	\$753.00			
SYLVAN LEARNING CENTER		\$815.00	\$1,312.00	
IOWA STATE UNIVERSITY			\$13.00	
PROFESSIONAL HOME AMES IN			\$596.00	\$1,339.00
AMES COMMUNITY SCHOOL DIS				\$452.00

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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", subparagraph (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 § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

(emphasis added).

Iowa Admin. Code r. 871-24.22(2)i(1) provides:

Benefit 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.

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.

The legislature has provided a specific rule that applies to substitute workers holding that this category of worker is not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. When an individual is hired to work "on-call" the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus, any diminution in hours is directly related to the sporadic availability of available work as no regular hours are guaranteed.

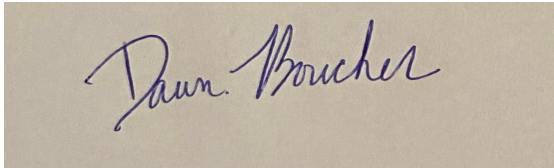
However, if the employer is completely closed down due to an emergency, such as the COVID-19 pandemic, there is no opportunity for any assignments at all. Accordingly, unemployment insurance benefits are allowed from April 5, 2020 through the benefit week ending April 18, 2020, during which the employer was completely closed due to emergency. The employer's account may be subject to charges.

Effective April 20, 2020, the employer was open and the lack of assignments for claimant's on-call work was due to the nature of it being on-call and the diminution in hours was related to the category of her work being sporadic. Unemployment insurance benefits are denied effective the benefit week beginning April 19, 2020.

**DECISION:**

The February 23, 2021 (reference 02) unemployment insurance decision is modified in favor of the employer. Unemployment insurance benefits funded by the State of Iowa are allowed from April 4, 2020 through April 18, 2020, provided the claimant was otherwise eligible. Unemployment insurance benefits are denied effective April 19, 2020 as the claimant was not unemployed in her on-call job.

*This decision denies regular unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.*



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Dawn Boucher  
Administrative Law Judge

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May 6, 2021  
Decision Dated and Mailed

db/kmj

**Note to Claimant**

- If this decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (PUA) section of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that discusses eligibility for claimant who are unemployed due to the Coronavirus public health emergency.
- You will need to apply for PUA benefits to determine your eligibility under the program. For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA benefits please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the

program expires. Back payments of PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>

- If you have applied for PUA benefits and have been approved for PUA benefits, this decision will not negatively affect your PUA benefits.