

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN P FRANZ
Claimant

APPEAL 20A-UI-11928-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CATHOLIC CONFERENCE
Employer

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

STATEMENT OF THE CASE:

On September 24, 2020, the claimant filed an appeal from the September 21, 2020, (reference 05) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 9, 2020. Claimant participated. Employer participated through business office manager Mary Carey and was represented by Paul Jahnke. Claimant's Exhibit A was received.

ISSUES:

Does the claimant have reasonable assurance of continued employment in the next school term or year?
Is the claimant able to and available for work?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant a substitute teacher?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for approximately 14 schools as a substitute teacher since May 2017. Claimant worked for this employer in a substitute capacity only. Claimant's only non-substitute teaching wages in his base period are with Sellers Broadcasting and do not make him monetarily eligible for regular unemployment insurance benefits on their own.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. In mid-March, Iowa Governor Kim Reynolds suspended in person classes for K-12 schools for what would end up being the remainder of the 2019- 2020 school year.

Claimant filed a claim for unemployment insurance benefits with an effective date of March 22, 2020. Employer did not have any work available for substitute teachers for the remainder of the

school year. At the end of the 2019-2020 school year, claimant remained on employer's substitute list.

Claimant is on the substitute list for the 2020-2021 school year, but is only available to take remote assignments due to his doctor's September 11, 2020, recommendation that he not work out in the public due to an underlying health condition.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 96.1A, 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 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. 871-24.22(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.

Iowa Admin. Code r. 871-24.52(10) states:

Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2)"i"(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)"i"(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)"i"(3) if they are:

- (1) Able and available for work.
- (2) Making an earnest and active search for work each week.
- (3) Placing no restrictions on their employability.
- (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

The legislature has provided a specific rule that applies to substitute teachers holding that this category of worker, among others, 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. Accordingly, claimant is not considered unemployed or available for work effective March 22, 2020, and benefits are denied.

DECISION:

The September 21, 2020, (reference 05) unemployment insurance decision is affirmed. The claimant is not unemployed and not available for work effective March 22, 2020. Regular unemployment insurance benefits are denied.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

November 17, 2020
Decision Dated and Mailed

cal/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits 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 under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**