

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES R HAYWORTH
Claimant

BONDURANT FARRAR COMM SCH DIST
Employer

APPEAL 21A-UI-07215-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On March 10, 2021, James Hayworth (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 3, 2021 (reference 03) that denied benefits as of August 16, 2020 based on a finding claimant was unavailable for work.

A telephone hearing was held on May 19, 2021. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Rod Maharry. Bondurant Farrar Comm School Dist (employer/respondent) participated by Director of Administrative Services Chad Carlson. Payroll Specialist Jennifer Farquhar participated as a witness for employer.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on June 28, 2016. Claimant was initially employed as a full-time driver and as a substitute teacher. He resigned the full-time position in November 2019 but stayed on as a substitute teacher and driver. Claimant is still employed there in those capacities. As a substitute, claimant can see available work online or is called and offered work. He is then free to accept or reject the offered work. He last performed work as a substitute teacher or driver on March 13, 2020.

Due to uncertainty caused by the pandemic, it was not clear at the end of the spring 2020 term and continuing into the summer whether there would be continued work available for claimant beginning in the fall 2020 term. Claimant was most recently paid to attend required annual trainings in June and August 2020 and was not notified at those times that there would be continuing work available, either.

Claimant never formally indicated to employer that he was unavailable for work, and he remains eligible to pick up work as a substitute as he wishes. However, claimant has chosen not to pick up such work. This is due in part to being concerned about COVID-19. It is also in part because he has a full pension from prior employment. Claimant continued to do substitute work after resigning the full-time position in November 2019 because he knew employer needed help from time to time. He was not employed elsewhere during the relevant timeframe.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated March 3, 2021 (reference 03) that denied benefits as of August 16, 2020 based on a finding claimant was unavailable for work is MODIFIED in favor of respondent. Benefits are denied effective April 19, 2020.

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 Admin. Code r. 871-24.22(2)i 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.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)“a” and “b.” An individual who is willing to accept only on-call work is not considered to be available for work.

The administrative law judge finds claimant does not meet the availability requirements to be eligible for benefits during the weeks filed. Claimant has not established he is available for work and has a genuine connection to the labor market, as he chose to resign a full-time position in November 2019 and since then has only performed infrequent work in an on-call capacity. While there were undoubtedly fewer substitute opportunities available due to the pandemic, that is the nature of on-call employment. That is, work is offered as it becomes available and claimant is free to accept or reject it. More recently, when work did become available, claimant has chosen not to pick up such work for personal reasons. Notably, claimant has not performed work elsewhere during the relevant timeframe.

The administrative law judge is sympathetic to claimant’s situation. As noted above, he likely lost opportunities for income because of the lack of available substitute opportunities. However, unemployment insurance benefits are not meant to replace lost income. They are meant to provide a safety net for those who are able to work, available for work, and searching for work – those who have a genuine connection to the labor market – but are not able to find work despite that.

DECISION:

The decision dated March 3, 2021 (reference 03) that denied benefits as of August 16, 2020 based on a finding claimant was unavailable for work is MODIFIED in favor of respondent. Benefits are denied effective April 19, 2020.



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

May 28, 2021
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.