

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SAMANTHA J VARGUS

Claimant

APPEAL NO. 21A-UI-01704-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUSCATINE COMMUNITY SCHOOL DIST

Employer

OC: 08/23/20

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

The claimant, Samantha Vargus, filed a timely appeal from the December 7, 2020, reference 01, decision that denied benefits effective August 23, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 23, 2021. The claimant participated. Anna Reyman represented the employer. Exhibits 1 through 5, A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

The administrative law judge was amenable to addressing the claimant's November 29, 2020 additional claim for benefits and weekly claim for the week that ended December 5, 2020 when the administrative law judge believed the Benefits Bureau had taken no action on the additional claim. The administrative law judge solicited testimony regarding the week of November 29, 2020 through December 5, 2020. However, during the employer's testimony it became evident that a new notice of claim had in fact been directed to the employer in response to the additional claim for benefits. Subsequent to the appeal hearing, the administrative law judge confirmed through the SIDES system that the Benefits Bureau had taken additional action in connection with the additional claim for benefits. To avoid interfering with the normal process of the Benefits Bureau, this decision will not address the additional claim that was effective November 29, 2020 or the claim for the week that ended December 5, 2020.

ISSUES:

Whether the claimant was able to work and available for work during the three-week period of August 23, 2020 through September 12, 2020.

Whether the claimant was partially and/or temporarily unemployed during the three-week period of August 23, 2020 through September 12, 2020.

Whether the employer's account may be charged for benefits for the three-week period of August 23, 2020 through September 12, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Samantha Vargus, is employed by the Muscatine Community School District as a full-time para-educator. The claimant began her employment in 2017 and has been classified as a full-time employee throughout. The claimant is assigned to a self-contained room where she services multiple students with disabilities. During the 2019-2020 academic year, the claimant worked seven hours per day, five days per week, when school was in session. The claimant's wage for that work was \$15.89 per hour. In August 2020, the employer and AFSCME made a joint announcement that the claimant's work hours would be reduced to 6.5 hours per day for the 2020-2021 academic year. The change went into effect Monday, August 24, 2020. The claimant's wage increased to \$16.36 at that time.

The claimant established an original claim for benefits that was effective August 23, 2020. Iowa Workforce Development set the claimant's weekly benefit amount at \$365.00. The District is the sole base period employer. The claimant made weekly claims for the weeks that ended August 29, September 5 and September 12, 2020. The claimant worked all the hours the employer had available for her during those three weeks. Her gross pay for each week totaled \$531.70. The claimant reported her wages and received no unemployment insurance benefits of any of the three weeks between August 23, 2020 and September 12, 2020. The claimant discontinued her claim for benefits after conferring with an IWD representative.

REASONING AND CONCLUSIONS OF LAW:

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) provides:

Benefits 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that

sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The claimant was able to work and available for work during the three-week period of August 23, 2020 through September 12, 2020. The employer did indeed reduce the claimant's work hours by .5 hours per day, 2.5 hours per week, effective August 24, 2020. The claimant made herself available for the work the employer had for her during the three-week period of August 23, 2020 through September 12, 2020. However, even with the reduction in work hours, the claimant's weekly wage exceeded her \$365.00 weekly benefit amount by more than \$15.00. For that reason, the claimant cannot be deemed partially unemployed during the three-week period of August 23, 2020 through September 12, 2020 and is not eligible for benefits for that period. The employer's account will not be charged for benefits for that three-week period.

DECISION:

The December 7, 2020, reference 01, decision is affirmed. The claimant was able to work, available for work, but not partially unemployed during the three-week period of August 23, 2020 through September 12, 2020. The claimant is not eligible for benefits for that period. The employer's account will not be charged for benefits for that three-week period.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

March 4, 2021
Decision Dated and Mailed

jet/scn