

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY ROBINSON
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 21A-UI-21625-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
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 28, 2021, the claimant filed an appeal from the September 21, 2021, (reference 04) unemployment insurance decision that denied benefits based on an Iowa Workforce Representative's determination that the claimant was ineligible for benefits because she was still employed at the same hours and wages in her original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2021. Claimant Kelly Robinson participated and testified. Employer participated through Rhonda Wagoner, benefits specialist. Official notice was taken of the administrative record.

ISSUES:

Is claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer in September 2011. Claimant last worked as an on-call substitute teacher and remains on the Des Moines Public School District's substitute roster. Her last assignment was on November 19, 2021. Claimant's administrative record does not show any qualified earnings as a self-employed public speaker. Claimant's base period wage history only shows earnings from her part-time substitute teaching employment through Des Moines Independent Community School District.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not able to work and available for work and is still employed in her part-time job at the same hours and wages as contemplated in the contract for hire.

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)(1) and (3) provide:

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).

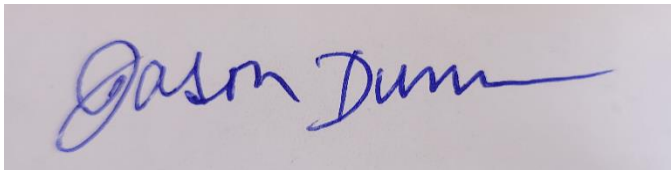
The legislature has provided a specific rule that applies to substitute teachers holding that this category of worker, among others, is not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. When an individual is 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 August 16, 2020, and benefits are denied.

The issues presented in this appeal are affirmed. The claimant is still employed as a substitute teacher for the employer. The claimant's wage record only shows reported wages from the Des Moines Independent Community School District and based on her position as an on-call substitute teacher. Claimant is not eligible to receive regular unemployment benefits.

DECISION:

The September 21, 2021, (reference 04) unemployment insurance decision is affirmed. The claimant is ineligible for regular unemployment benefits effective May 23, 2021. Benefits are withheld.



Jason Dunn
Administrative Law Judge
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January 5, 2022
Decision Dated and Mailed

jd/mh