

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER DUNKER
Claimant

APPEAL NO. 21A-UI-05702-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DALLAS CENTER - GRIMES COMMUNITY
SCHOOL**
Employer

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4-5 – Reasonable Assurance
Iowa Admin. Code r. 871-24.52(10) – Substitute Teacher
871 IA Admin. Code – 24.22(2)(I) – On Call Worker

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 17, 2021, reference 05, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on June 3, 2021. Claimant participated personally. Employer participated by Michelle Wearmouth.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year?

Is claimant a substitute teacher?

FINDINGS OF FACT:

The claimant currently works for Dallas Center-Grimes Community School District, a base period employer, as an on call substitute teacher under the same terms and conditions as contemplated in the original contract of hire. Claimant was not guaranteed any hours as a part of her substitute teaching, but worked for a number of years as a valued and preferred part time teacher at multiple schools.

Claimant did work for employer during the 2019-2020 school year, only to have her employment halted as a result of Covid ending the school year. Claimant had no more substitute hours after March 14, 2020. Throughout the time claimant was not working, she remained able and available for work.

Employer's school year ended on June 4, 2020. On June 3, 2020 claimant and other substitute teachers were sent an annual availability notice indicating that ongoing work would be available to them if they chose to return. Claimant returned this notice on June 4, 2020 indicating she would return to substitute teaching.

Claimant did return to her on call substitute teaching position for the fall semester of 2020-2021 school year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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 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. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.4(5)b provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Because the claimant is currently employed part time without a yearly teacher's contract and remained in an on call status as of August 30, 2020, claimant is not considered partially unemployed. Benefits are denied.

DECISION:

The February 17, 2020, reference 05, decision is affirmed. The claimant is not partially unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

June 16, 2021
Decision Dated and Mailed

bab/mh