

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LUCRETIA C HOFFMAN**

Claimant

**APPEAL 21A-UI-03581-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANKENY CHRISTIAN ACADEMY**

Employer

**OC: 05/17/20**

**Claimant: Appellant (2R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.4(5) – Reasonable Assurance  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 17A.12(3) - Default Decision  
871 IAC 26.14(7) - Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

Lucretia Hoffman (claimant) appealed a representative's January 14, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits based on employment with Ankeny Christian Academy (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2021. The claimant participated personally. The employer participated by Steven Robinson, School Administrator; Diane Scott, Financial Director; and Melanie Frericks, School Manager. The administrative law judge took official notice of the administrative record.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable for work. .

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an academic institution. The claimant worked for the employer from March 12, 2015, to February 14, 2020, as an on-call substitute teacher. She knew she would return each year as a substitute teacher unless the employer specifically told her she would not be returning.

The employer and the claimant understood at the time of hire that there would be no guarantee of hours. The claimant worked whenever hours were available. The employer has offered her work but she has not been able to work for the employer since February 14, 2020, because she has been busy working for other schools.

The claimant filed for unemployment insurance benefits with an effective date of May 17, 2020. She is also an on-call substitute teacher for Des Moines Independent Community School District and Saydel Community School District. All the hours the claimant worked for the employer in her base period are for on-call work.

The claimant filed for unemployment insurance benefits with an effective date of May 17, 2020. Her weekly benefit amount was determined to be \$124.00. The claimant received benefits of \$124.00 per week from May 17, 2020, to the week ending August 22, 2020. This is a total of \$1,736.00 in state unemployment insurance benefits after the separation from employment. She also received \$7,200.00 in Federal Pandemic Unemployment Compensation for the twelve-week period ending August 22, 2020.

### **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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.51(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.

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

(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 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.

Iowa Admin. Code r. 871-24.52(9) provides in part:

(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

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 96.19(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(3) 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....

i. On-call workers.

(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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was hired as an on-call substitute teacher and is still working as an on-call substitute teacher for the employer. There has been no change to her hours. All of the claimant's wages during her base period come from on-call employment. Workers who only accept on-call work are not considered available for work. The claimant is not available for work as of May 17, 2020.

The claimant had reasonable assurance that her employment would continue following the employer's established and customary vacation period. There was an implied agreement that had been in place since she was hired in 2015. As such, benefits are denied as of May 17, 2020.

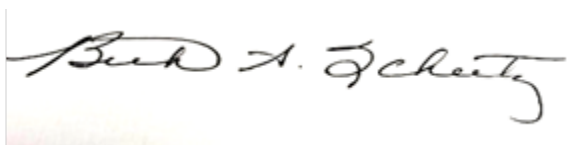
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

The representative's January 14, 2021, decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits as of May 17, 2020. She is not available for work as of May 17, 2020. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer.

**REMAND:**

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz  
Administrative Law Judge

March 31, 2021  
Decision Dated and Mailed

bas/kmj