

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AUBREY J DOOLEY
Claimant

ANKENY COMMUNITY SCHOOL DISTRICT
Employer

APPEAL NO. 20A-UI-08446-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

Aubrey Dooley filed a timely appeal from the July 10, 2020, reference 01, decision that denied benefits for the period of April 5, 2020 through May 23, 2020, based on the deputy's conclusion that Ms. Dooley was working enough hours to be considered employed and did not meet the unemployment insurance "availability" requirements. After due notice was issued, a hearing was held on August 28, 2020. Ms. Dooley participated. Jessica Dirks, Chief of Human Resources, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-08445-JTT. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant was available for work within the meaning of the law during the period of April 5, 2020 through May 23, 2020.

Whether the claimant was temporarily and/or partially unemployed within the meaning of the law during the period of April 5, 2020 through May 23, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Aubrey Dooley was employed by Ankeny Community School District as a part-time Special Education Associate from 2017 until May 29, 2020. Ms. Dooley's work hours were 8:00 a.m. to 2:45 or 3:00 p.m. Monday, Tuesday, Thursday and Friday, and Wednesday from 8:00 a.m., to early release time. Ms. Dooley usually worked 30 hours per week. Ms. Dooley's most recent wage was \$12.95. Ms. Dooley last performed work for the employer in March 2020, at which time the employer shut down schools to prevent spread of the COVID-19. The school district continued to pay Ms. Dooley her regular wages through the end of the school year that ended May 29, 2020, pursuant to Ms. Dooley's employment agreement. Ms. Dooley was not classified as a contracted employee, but nonetheless performed her work duties pursuant to an annual written agreement with the district. Ms. Dooley had a nine-month appointment that corresponded with the academic year. The written agreement was renewable annually.

Ms. Dooley established an original claim for unemployment insurance benefits that was effective April 5, 2020. Iowa Workforce Development set Ms. Dooley's weekly benefit amount for regular benefits at \$255.00. Ms. Dooley received that amount in regular unemployment insurance benefits for each of the weeks between April 5, 2020 and June 13, 2020. However, the \$388.50 in wages the employer paid to Ms. Dooley for each of those weeks exceeded the weekly benefit amount by more than \$15.00.

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. ...

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 evidence establishes that Ms. Dooley was both able to work and available for work during the period of April 5, 2020 through May 23, 2020. However, Ms. Dooley cannot be considered totally, partially, or temporarily unemployed during that period because the employer continued to pay her regular wages and the wages exceeded her weekly unemployment insurance benefit amount by more than \$15.00. Ms. Dooley is not eligible for regular benefits for the period of April 5, 2020 through May 23, 2020.

DECISION:

The July 10, 2020, reference 01, is modified as follows. The claimant was able to work and available for work during the period of April 5, 2020 through May 23, 2020. However, the claimant cannot be considered totally, partially, or temporarily unemployed during that period because the employer continued to pay her regular wages and the wages exceeded her weekly unemployment insurance benefit amount by more than \$15.00. The claimant is not eligible for regular benefits for the period of April 5, 2020 through May 23, 2020.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**



James E. Timberland
Administrative Law Judge

October 13, 2020
Decision Dated and Mailed

jet/scn