

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICTOR A LAUGHLIN
Claimant

CEDAR FALLS COMM SCH DIST
Employer

APPEAL 20A-UI-10727-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)i – Able & Available – On-Call Worker
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

On September 2, 2020, Victor A. Laughlin (claimant) filed an appeal from the August 31, 2020, reference 04, unemployment insurance decision that denied benefits effective June 28, 2020, based upon the determination he had reasonable assurance of continued employment with Cedar Falls Community School District (employer) between academic years or terms. After due notice was issued, a telephone hearing was held on October 20, 2020. The claimant participated. The employer participated through Lori Bruns, HR Specialist. No exhibits were offered into the record.

The administrative law judge (ALJ) took official notice of the administrative record, specifically the claimant's non-monetary record and prior unemployment and ALJ decisions. On May 16, 2020, the agency issued an unemployment insurance decision, reference 02, addressing the issue of reasonable assurance with this employer. The claimant appealed. On July 2, an ALJ found he had reasonable assurance through the week ending March 21 and effective June 1, and was not eligible for benefits. She remanded the issue of whether the claimant was eligible for benefits between March 22 and May 31 to the Benefits Bureau for review. That ALJ decision is currently pending review with the Employment Appeal Board (EAB).

On August 31, following another fact-finding interview, the agency issued another unemployment insurance decision, reference 04, the decision currently on appeal, finding the claimant has reasonable assurance and is not eligible for benefits. As the issue of reasonable assurance has been addressed at the appeals level and is under review by the EAB, the undersigned ALJ does not have jurisdiction on that issue. However, the parties agreed to waive notice on the issues of whether the claimant is totally, partially, or temporarily unemployed and whether he is able to and available for work as an on-call employee.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective March 22 through May 31, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for the employer since August 8, 2016, as a seasonal diving coach and substitute teacher. The employer maintains a list of available substitutes and hires people from that list. The claimant was on that list during the 2019-2020 school year and remains on that list for the current school year, 2020-2021.

The claimant filed his claim for unemployment insurance benefits effective March 15, 2020 during Spring Break. After the break, the employer announced it would no longer be conducting in-person learning. The governor issued an emergency proclamation closing schools in response to the COVID-19 pandemic. The claimant's base period includes October 1, 2018 through September 30, 2019. During that time, the claimant had four other educational employers for whom he worked as a substitute teacher, earning wages in an on-call or as-needed basis.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not unemployed from March 22 through May 31, 2020, as defined by Iowa law. Regular unemployment insurance benefits are denied.

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:

Definitions.

38. 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) 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.

(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.

(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.

(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 between contracts or terms and during customary and established periods of holiday recesses 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.

(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 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

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 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.

In this case, the claimant's base period consists solely of on-call, education wage credits. Because the claimant was hired to work only on-call or as needed and he remains on the substitute teacher list, he is not considered to be unemployed within the meaning of the law. Thus, any diminution in hours is directly related to the sporadic availability of available work as no regular hours were guaranteed. Accordingly, benefits are denied effective March 22 through May 31, 2020.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 31, 2020, reference 04, unemployment insurance decision is modified in favor of the respondent. The claimant is not considered unemployed as defined by Iowa law and is not eligible for benefits effective March 22 through May 31, 2020.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Stephanie R. Callahan
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

src/sam

Note to Claimant. This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.