

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA L BURGER
Claimant

APPEAL 18A-UI-06937-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GILBERT COMMUNITY SCHOOL DISTRICT
Employer

**OC: 06/03/18
Claimant: Respondent (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)f – Availability for Work - Part-time Worker/Student
Iowa Admin. Code r. 871-23.43(4)a – Supplemental Employment
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the June 22, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on July 13, 2018. Claimant did not register for the hearing and did not participate. Employer participated through school business official Gail Hopkins. Employer's Exhibit 1 was received.

ISSUES:

Is the claimant able to work and available for work effective June 3, 2018?
Is claimant still employed at the same hours and wages?
Is the claimant eligible for partial unemployment?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time bus driver for employer during the 2017-2018 school year. Claimant's last day of work was June 1, 2018. Employer is an educational institution and claimant is off work for summer break. On May 17, 2018, claimant signed a contract stating she would return in the same position for the 2018-2019 school year. Claimant has other regular non-educational institution wages in her base period, which may make her otherwise eligible for benefits.

No initial decision has been issued by the Benefits Bureau of Iowa Workforce Development on whether claimant has reasonable assurance of continued employment next year and whether she is still eligible for benefits based on non-educational institution wages in her base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed and able to and available for work.

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.

In this case, claimant is not working the same hours for the same wages effective June 1, 2018, as she is not working for the employer, an educational institution, during summer break. Claimant is totally unemployed and able to and available for work. However, there is a remaining issue on whether claimant has reasonable assurance for continued work next academic term. The resolution of that issue and whether claimant is otherwise eligible for benefits based on non-educational institution wage credits will determine whether claimant is eligible for benefits and whether employer should be relieved of charges for those benefits. Unfortunately, the issues cannot be resolved in this decision as the hearing notice did not list those issues and claimant did not participate in the hearing in order to waive notice of those issues. Therefore, the case must be remanded to the Iowa Workforce Development Benefits Bureau.

DECISION:

The June 22, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is totally unemployed and benefits are allowed, provided she is otherwise eligible.

REMAND:

The issues of whether claimant has reasonable assurance from this employer for continued employment next year (see Exhibit 1 contained in the file) and whether she is still eligible for benefits based on non-educational institution wage credits only is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Christine A. Louis
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Decision Dated and Mailed

cal/scn