

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAISEER H YOSIF
Claimant

AMES COMMUNITY SCHOOL DIST
Employer

APPEAL 21A-UI-06115-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 17, 2021 (reference 01) unemployment insurance decision that concluded the claimant was not eligible for benefits effective April 17, 2020 because her unemployment occurred between academic years or terms. The parties were properly notified of the hearing. A telephone hearing was held on April 30, 2021. The claimant participated personally. The employer participated through witness Kristin Johnson. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work effective May 17, 2020?
Did the claimant have reasonable assurance of employment between academic years or terms?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with this employer on March 3, 2015. She works as a substitute educational assistant. She works on-call when hours are available to her. She does not have a set schedule and is not guaranteed a certain number of hours per week. She does not work when school is not in session. She has the ability to reject offers of assignment without discipline based upon her on-call status.

On March 23, 2020, the employer's schools closed due to the COVID-19 pandemic. The schools re-opened in a virtual learning environment only on April 20, 2020 and continued in that mode of education until the end of the 2019/2020 school year on June 2, 2020.

No job assignments were available to the claimant from March 23, 2020 through April 20, 2020 as all of the employer's schools were closed due to the COVID-19 pandemic; however, the claimant had her own minor children to care for at home and was not available for work with this employer if an assignment had been offered to her.

Assignments for on-call substitute staff were available from April 20, 2020 through the end of the school year on June 2, 2020. Claimant did not have any assignments from April 20, 2020 through June 2, 2020.

In July of 2020, the employer informed the claimant that she would be able to return to her same position for the upcoming school year. Claimant did not receive the email and did not enter the appropriate information required of her. The claimant does not typically use the employer's online system for receiving assignments; instead, she typically will call the school secretary's office when she has days that she can work an assignment. Her days that she is able to work vary because two of her three children remain in a hybrid learning environment where they attend both in person and virtual schooling. It is necessary for the claimant to remain with the children when they are learning virtually.

The school was scheduled to begin the 2020/2021 school year on August 24, 2020; however, the start date was pushed back to September 8, 2020 due to the COVID-19 pandemic. No assignments were available to the claimant from August 24, 2020 through September 8, 2020 due to the school closure. However, the claimant did not have childcare for her minor children available in order to accept any assignments. Claimant became available for work again on or about the beginning of April 2021. The last assignment she rejected was April 1, 2021. See Exhibit 1.

As of approximately April 4 2021, the claimant has become available for work and began accepting assignments again from the employer. Claimant's administrative records establish that she filed her claim for unemployment insurance benefits effective May 17, 2020 and filed weekly-continued claims from May 17, 2020 through February 13, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(5) 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 96.1A, 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:

a. Benefits based on service in an instructional, research, or principal administrative capacity in 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 during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

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.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Code § 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", subparagraph (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 § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

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)(1) 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.

(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.

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 qualifying 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. Thus, any diminution in hours is directly related to the sporadic availability of available work as no regular hours are guaranteed. However, if the employer is completely closed down due to an emergency, such as the COVID-19 pandemic, there is no opportunity for any assignments at all.

In this case, the claimant filed her claim for benefits effective May 17, 2020. As of April 20, 2020, the employer was open and operating in a virtual learning environment and the lack of assignments for claimant’s on-call work was due to the nature of it being “on-call”; thus, the diminution in hours was related to the category of her work being sporadic and not due to a temporary closure. Therefore, unemployment insurance benefits are denied effective May 17, 2020 as the claimant was not considered unemployed under Iowa law as she was an on-call worker.

Claimant did have reasonable assurance to return to the same position for the following year when the employer offered for her to do so. As such, the claimant is also disqualified from receipt of benefits between academic years or terms from June 2, 2020 through August 22, 2020, when the school was scheduled to open for the 2020/2021 school year.

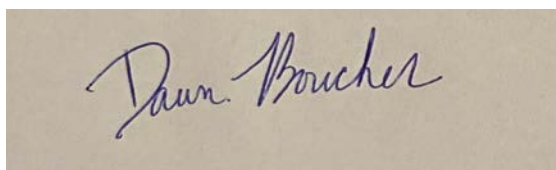
School did not open until September 8, 2020 due to the COVID-19 pandemic and was completely shut down from August 23, 2020 through September 7, 2020. However, the claimant was not able to and available for work during that period because she had minor children at home for which she was caring for. As such, benefits are denied effective August 23, 2020 because the claimant was unavailable for work due to her caring for her minor children.

DECISION:

The February 17, 2021 (reference 01) unemployment insurance decision is modified in favor of the employer. Unemployment insurance benefits funded by the State of Iowa are denied effective May 17, 2020 as the claimant was not unemployed in her on-call job.

Claimant had reasonable assurance between academic years or terms from June 2, 2020 through August 22, 2020 and benefits are denied for that period of time as her unemployment occurred between academic years or terms.

Benefits are denied effective August 23, 2020 as the claimant was not able to and available for work due to lack of childcare.



Dawn Boucher
Administrative Law Judge

May 7, 2021
Decision Dated and Mailed

db/scn

Note to Claimant

- If this decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (PUA) section of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that discusses eligibility for claimant who are unemployed due to the Coronavirus public health emergency.
- You will need to apply for PUA benefits to determine your eligibility under the program. For additional information on how to apply for PUA go to: <https://www.iowaworkforcedevelopment.gov/pua-information>
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA benefits please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments of PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>
- If you have applied for PUA benefits and have been approved for PUA benefits, this decision will not negatively affect your PUA benefits.