

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOCELYN MUHAMMAD SHABAZZ-ALLAH**  
Claimant

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**APPEAL 22A-UI-05553-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Respondent (2R)**

Iowa Code § 96.1A(37) – Total, partial unemployment  
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

**STATEMENT OF THE CASE:**

On March 1, 2022, Des Moines Ind Community Sch Dist (employer/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated February 24, 2022 (reference 05) that allowed unemployment insurance benefits beginning April 12, 2020 based on a finding claimant was able and available for work during a short-term layoff.

A telephone hearing was held on April 12, 2022. The parties were properly notified of the hearing. Jocelyn Muhammad Shabazz-Allah (claimant/respondent) participated personally. Employer participated by Rhonda Wagoner. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant a substitute teacher?
- III. Is the claimant able to and available for work?
- IV. 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 filed an original claim for unemployment insurance benefits with an effective date of April 12, 2020. At that time claimant was employed as a substitute teacher. Claimant began in this position in the fall of 2019. In this position work was offered as it became available and claimant was free to accept or reject it. Claimant remained employed in this position through the spring 2021 semester. There was no substitute teaching work available beginning March 13, 2020 due

to due to spring break and continuing after that due to schools closing because of the pandemic and the summer break.

Claimant filed under an alternate base period which included the second through fourth quarters of 2019 and the first quarter of 2020. Claimant was employed by employer in a non-substitute position in the second quarter of 2019.

Claimant filed a claim for benefits from the benefit week ending April 18, 2020 and continuing through the benefit week ending October 17, 2020. She was not employed elsewhere during this time and did not report job searches during any of those weeks. She did not report earning wages in any of those weeks except for the week ending October 17, 2020, when she reported wages in the amount of \$700.00. At that time claimant had accepted a long-term substitute teaching position.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the decision dated February 24, 2022 (reference 05) that allowed unemployment insurance benefits beginning April 12, 2020 based on a finding claimant was able and available for work during a short-term layoff is REVERSED. Claimant is ineligible for benefits effective April 12, 2020.

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 96.1A(37) 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. 871-24.52(10) provides:

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).

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

(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 Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The administrative law judge finds claimant was totally unemployed during each week filed except for the week ending October 17, 2020, when she began a long-term substitute position with employer. However, claimant was not available for work within the meaning of the law during the weeks she was totally unemployed and was therefore ineligible for benefits during that period.

During the weeks filed claimant remained employed with employer as a substitute teacher. While there was less work available during those weeks, this is the nature of on-call employment and particularly substitute work with an educational institution during break periods. She was not actively seeking work elsewhere and while she had some other wages with the employer at the beginning of the base period she was not truly attached to the labor market during the weeks filed. As such benefits must be denied.

While the administrative law judge understands employer does not contest claimant's eligibility for benefits prior to the 2020 summer break, claimant's eligibility for benefits during each week filed is ultimately a question that must be determined by the undersigned based on the facts and the applicable law.

Because claimant does not meet the availability requirements during the weeks filed the issue of whether claimant was eligible for benefits between academic years or terms need not be addressed. Employer's account is not subject to charge as claimant was receiving the same employment from employer during the period in question. The administrative law judge does not address claimant's eligibility beginning March 14, 2021, as that was addressed in a prior decision which remains in force. See 22A-UI-00868-CS-T.

**DECISION:**

The decision dated February 24, 2022 (reference 05) that allowed unemployment insurance benefits beginning April 12, 2020 based on a finding claimant was able and available for work during a short-term layoff is REVERSED. Claimant is ineligible for benefits effective April 12, 2020.

**REMAND:**

This matter is remanded to the Benefits Bureau for an initial investigation and determination on whether claimant was overpaid benefits during the period of ineligibility.



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Andrew B. Duffelmeyer  
Administrative Law Judge

April 15, 2022  
Decision Dated and Mailed

abd/abd