

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LARRY J KERSEVICH**  
Claimant

**VINTON-SHELLSBURG COMM SCH DIST**  
Employer

**APPEAL 21A-UI-00822-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/02/20**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

On December 1, 2020, the claimant filed an appeal from the November 24, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at the same hours and wages as contemplated in his contract for hire and was therefore not eligible for unemployment insurance benefits. The parties were properly notified of the hearing. A telephonic hearing was held on February 11, 2021. The claimant, Larry J. Kersevich, participated. The employer, Vinton-Shellsburg Community School District, did not register a participant for the hearing. The administrative law judge takes official notice of the administrative record.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed effective August 2, 2020?  
Is the claimant able to and available for work effective August 2, 2020?  
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 began employment with this employer in 2015 as a part-time hourly bus driver. He worked during the school year and during the summer months. During the school year, he worked four hours Monday through Friday. During the summer months, he drove for the summer lunch program, which guaranteed him two and one-half hours each day. He also drove for special activities in the summer when asked.

On or about August 3, 2020, the employer ended all of its summer programs. The summer lunch program was ceased, so the cafeteria workers could begin preparing for the school year in light of COVID-19, and all activities were cancelled. There were no further driving opportunities until school commenced on August 31, 2020. At the end of August, Claimant was given the opportunity to work five hours cleaning and inspecting busses and attending a

meeting. He reported the income he earned that week when he filed his weekly continued claim for benefits.

The administrative record reflects that Claimant filed weekly continued claims for benefits from the week ending August 8, 2020, through the week ending September 19, 2020. Claimant reported \$256.00 in wages for the week ending September 5, 2020; \$518.00 in wages for the week ending September 12, 2020; and \$650.00 in wages for the week ending September 19, 2020. The administrative record reflects that Claimant received unemployment insurance benefits through the week ending September 5, 2020; and he received Federal Pandemic Unemployment Compensation ("FPUC") benefits through the week ending August 29, 2020.

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

For the reasons that follow, the administrative law judge concludes Claimant was totally unemployed for the four-week period ending August 29, 2020. Claimant was still employed at the same hours and wages as contemplated in his contract for hire for the one-week period ending September 5, 2020.

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", 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 § 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.*

In this case, Claimant received no wages and performed no services for the employer during the four-week period ending August 29, 2020. Claimant was totally unemployed during those four weeks, and benefits are allowed for those four weeks.

For the week ending September 5, 2020, Claimant testified that he went back to work as an hourly bus driver. During that week, he was employed in his part-time job at what he stated were the same hours and wages as contemplated in the original contract for hire. Therefore, Claimant should not have received unemployment insurance compensation for that one-week period.

**DECISION:**

The November 24, 2020, (reference 01) unemployment insurance decision is modified in favor of claimant/appellant. Claimant was totally unemployed for the four-week period ending August 29, 2020, and benefits are allowed for those four weeks. Claimant was still employed at the same hours and wages as contemplated in his contract for hire during the one-week period ending September 5, 2020, and benefits are withheld for that week.

**REMAND:**

The issue of whether the claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

February 23, 2021  
Decision Dated and Mailed

lj/mh