

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CAROL SCHLEIHS**

Claimant

**WEST MARSHALL COMM SCH DIST**

Employer

**APPEAL 20A-UI-12916-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**

**Claimant: Appellant (1/R)**

Iowa Code § 96.4(5) – Reasonable Assurance  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

**STATEMENT OF THE CASE:**

Carol Schleih (claimant) appealed a representative's October 14, 2020, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with West Marshall Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2020. The claimant participated personally. The employer participated by Stephanie Edler, Business Manager. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issue is whether the claimant is between successive terms with an educational institution and had reasonable assurance of employment, whether the claimant is eligible for total or partial unemployment benefits, whether the claimant is able and available for work, and whether the claimant is a substitute teacher.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an educational institution. The claimant worked from August 1990, to 2017, as a teacher. She was rehired in January 2018, as a coach and substitute teacher. When she was hired as a substitute teacher and coach, the claimant knew she would be hired and return each academic year. She worked for the employer as a coach and substitute teacher for the 2019-2020 academic year.

In the spring of 2020, the employer offered the claimant a coaching contract for the fall of 2020. The claimant returned in the fall of 2020, and is coaching middle school girl's basketball. The claimant was a substitute teacher until the fall of 2020. She quit being a substitute teacher for

the time being because of the COVID-19 virus. The claimant has elderly siblings whom she does not want to expose to the virus.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$254.00. The claimant received benefits of \$254.00 per week from May 17, 2020, to the week ending June 13, 2020. This is a total of \$1,016.00 in state unemployment insurance benefits after the separation from employment. She also received \$2,400.00 in Federal Pandemic Unemployment Compensation for the four-week period ending June 13, 2020.

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

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.4(5)a 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 96.19, 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.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

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

i. On-call workers.

(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 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.

Iowa Admin. Code r. 871-24.52(9) provides in part:

(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

The claimant was and is employed by an educational institution. The claimant worked for the 2019-2020, academic year and expected to work for the 2020-2021 academic year. The two years are successive terms. The claimant had a reasonable assurance that her employment would continue following the employer's established and customary vacation period. The claimant filed for unemployment insurance benefits for the four-week period ending June 13, 2020. This was the period after school ended. She is not eligible for benefits during this four-week period.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. 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 (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

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 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 Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). A worker is considered to be unavailable for work when an employee limits working hours for a particular reason. In this case, the claimant limited working hours at her on call job so as not to expose her siblings to the virus. Limiting working hours made the claimant unavailable for work in her customary occupation after September 1, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. 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 (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

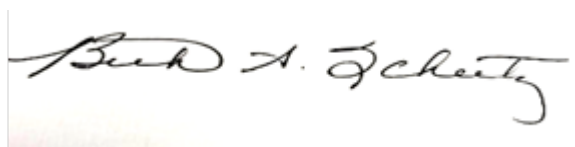
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

The representative's October 14, 2020, decision (reference 03) is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer. The claimant is not eligible to received unemployment insurance benefits for the four-week period ending June 13, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

*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>.



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Beth A. Scheetz  
Administrative Law Judge

December 23, 2020  
Decision Dated and Mailed

bas/scn