

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICKI MULERT

Claimant

APPEAL 21A-UI-06475-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEOSTA-SETON CATHOLIC SCHOOLS

Employer

OC: 03/15/20

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

The claimant/appellant, Vicki Mulert, filed an appeal from the February 22, 2021 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2021. The claimant participated. The employer was represented by Paul Jahnke, hearing representative. Toni Lubber, bookkeeper, testified for the employer. The administrative law judge took official notice of the administrative records, including wage history. Claimant Exhibit A was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to and available for work April 26, 2020 through May 30, 2020?

Is the claimant totally, partially, or temporarily unemployed?

Is the claimant still employed at the same hours and wages?

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 established her claim for unemployment insurance benefits with an effective date of March 15, 2020. Claimant’s weekly benefit amount is \$336.00. She made weekly continued claims for the period of March 15, 2020 through May 30, 2020. A reference 03 initial decision denied benefits for the period of March 15, 2020 through March 28, 2020. A reference 04 decision allowed benefits March 29, 2020 through April 25, 2020. This decision will address April 26, 2020 through May 30, 2020.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed full time with the employer since 2019. For the 2019-2020 school year, claimant worked as a substitute teacher.

On March 16, 2020, Governor Reynolds issued a proclamation closing K-12 school statewide due to the emerging COVID-19 pandemic. Claimant was unemployed due to the pandemic-related shutdown from March 15, 2020, through the week ending May 30, 2020, at which time her work for the school year would have ended otherwise. It was not the employer's voluntary choice to close its school in March 2020, nor was its claimant's voluntary choice to take a leave of absence from work. Due to the pandemic, there was simply no work available.

Claimant did perform some work for her part-time employer, HR247. She reported those wages each week in conjunction with her claims. Her earnings were less than her weekly benefit amount.

Claimant is listed as Group Code 8, which currently indicates that she is unemployed because of the pandemic. Under this group code, claimant is still attached to the employer but is not able to work due to the pandemic, and the employer is relieved of any charges.

The IWD website states:

ATTENTION EMPLOYERS:

At this time, IWD is not charging employers for claims made by their employees due to COVID-19 related unemployment. Presently, there are also no plans to enact a trigger to begin charging employers in the event that the trust goes below a certain threshold. IWD will notify employers of any changes to this decision should the need arise.

See: <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the initial decision is modified in favor of the claimant/appellant.

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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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".

Here, claimant was totally unemployed effective April 26, 2020, until May 28, 2020 (through the week ending May 30, 2020). This total unemployment was a result of Governor Reynolds closing Iowa's K-12 schools due to the COVID-19 pandemic. Claimant was otherwise able to and available for work. Benefits are allowed from April 26, 2020 through May 30, 2020, provided she is otherwise eligible. As claimant is classified as Group Code 8, the employer shall not be charged for these benefits.

DECISION:

The February 22, 2021 (reference 05) unemployment insurance decision is modified in favor of appellant.

Claimant was totally unemployed and was able to and available for work; benefits are allowed from April 26, 2020 through May 30, 2020, provided she is otherwise eligible. The employer shall not be charged for any benefits paid April 26, 2020 through May 30, 2020.



Jennifer L. Beckman
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May 18, 2021
Decision Dated and Mailed

jlb/scn