

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LAURA A BAKER**

Claimant

**DANVILLE COMMUNITY SCHOOL DIST**

Employer

**APPEAL 21A-UI-07306-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**

**Claimant: Appellant (3)**

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Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Code § 96.19(38) – Total, partial unemployment

**STATEMENT OF THE CASE:**

On March 11, 2021, Laura Baker (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 4, 2021 (reference 02) that denied benefits as of May 31, 2020 based on a finding claimant's unemployment occurred between academic years or terms.

A telephone hearing was held on May 20, 2021. The parties were properly notified of the hearing. Claimant participated personally. Danville Community School District (employer/respondent) did not register a number for the hearing or participate.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant has been working as a substitute teacher for employer as well as the West Burlington and Burlington school districts since approximately 2014. Claimant remains in substitute teaching roles with those employers. Claimant filed for benefits because of the lack of substitute teaching opportunities caused by the pandemic and resulting school closures.

The base period of the claim is from the first quarter of 2019 through the fourth quarter of 2019. Claimant's wage credits in this period consist entirely of wage credits earned by performing on-call work as a substitute teacher.

The administrative law judge notes another decision was issued on March 4, 2021 (reference 02) which allowed benefits beginning April 19, 2020 based on a finding claimant was able and available for work during a short-term layoff.

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

For the reasons that follow, the decision dated March 4, 2021 (reference 02) that denied benefits as of May 31, 2020 based on a finding claimant's unemployment occurred between academic years or terms is MODIFIED in favor of respondent. Claimant is ineligible for benefits effective April 19, 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 96.19(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. 871-24.22(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.

The administrative law judge finds there is no question claimant filed for benefits in good faith based on the lack of substitute teaching work available due to the pandemic. However, because claimant's wage credits during the base period consist entirely of wage credits earned by performing on-call work as a substitute teacher, she is not considered an unemployed individual and does not meet the availability requirements to be eligible for benefits. Benefits must therefore be denied effective April 19, 2020. This decision supersedes the March 4, 2021 (reference 02) which allowed benefits beginning April 19, 2020 based on a finding claimant was able and available for work during a short-term layoff.

**DECISION:**

The decision dated March 4, 2021 (reference 02) that denied benefits as of May 31, 2020 based on a finding claimant's unemployment occurred between academic years or terms is MODIFIED in favor of respondent. Claimant is ineligible for benefits effective April 19, 2020.



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

May 28, 2021

Decision Dated and Mailed

abd/kmj

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.