

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURA BOLSINGER

Claimant

APPEAL 21A-UI-05867-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANCHESTER-ST MARYS

Employer

OC: 04/05/20

Claimant: Respondent (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
Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The employer/appellant, Manchester St. Marys, filed an appeal from the February 1, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits effective April 5, 2020 on the basis of claimant having reasonable assurance. The parties were properly notified about the hearing. A telephone hearing was held on April 28, 2021. The claimant participated. Dale Bolsinger attended as an observer. The employer was represented by Paul Jahnke, hearing representative. Diane Hammell testified for the employer. Kelley Harbach attended as an observer. At the time of the hearing, both parties waived notice on the issues of whether claimant was able to and available for work, whether she was considered totally, temporarily or partially unemployed and employer chargeability. The administrative law judge took official notice of the administrative records, including wage history. Employer Exhibit 1 was admitted. 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 effective April 5, 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?
Did the claimant have reasonable assurance of continued employment in the next school year?

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 April 5, 2020. She made weekly continued claims for the period of April 5, 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 2004. Most recently, claimant has worked as a hot lunch director for the employer.

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 28, 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.

On May 14, 2020 the employer issued a letter from its president to claimant stating it planned to offer her employment for the coming school year. The employer notified claimant that it expected to recall her for the coming 2020-21 school year in a similar capacity as she had been employed for the prior year. Claimant received this letter, checked the option indicating she planned to return for the 2020-21 school year, and returned it to the employer. Claimant did not return to the 2020-21 school year when she tendered her resignation effective July 2, 2020.

Employer states it does not protest the receipt of benefits, but does not believe it should be charged. Employer stated based upon representation from IWD, that it believed its account would not be charged for claims that were due to COVID-19. Employer's testimony is consistent with information for employers on the IWD website, which 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>

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.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the decision is modified as follows:

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 5, 2020, until May 28, 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 5, 2020, until May 28, 2020, provided she is otherwise eligible. As claimant is classified as Group Code 8, the employer shall not be charged for these 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.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or 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.

Claimant had reasonable assurance of continued employment for the 2020-21 school year on or about May 14, 2020, prior to the end of the school year. As a result, claimant is not considered unemployed and is not eligible for benefits effective May 31, 2020, once her work ended for the school year and she was between academic years. Claimant did not file claims after May 30, 2020 so the issue of eligibility for the summer, or monetary eligibility outside of her educational wages is moot at this time.

DECISION:

The February 1, 2021 (reference 01) unemployment insurance decision is modified in favor of employer/appellant. Claimant was totally unemployed and was able to and available for work; benefits are allowed from April 5, 2020 through May 30, 2020, provided she is otherwise eligible. The employer shall not be charged for any benefits paid April 5, 2020 through May 30, 2020. Claimant had reasonable assurance of returning to work the following academic year or term; benefits are denied effective May 31, 2020. (Claimant did not make any claims after May 30, 2020 so the issue is moot.)



Jennifer L. Beckman
Administrative Law Judge
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Iowa Workforce Development
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Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 5, 2021
Decision Dated and Mailed

jlb/scn

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.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. More information about how to apply for PUA is available online at: www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>