

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAUREN ROBERG
Claimant

SOUTH SIOUX CITY COMM
Employer

APPEAL 21A-UI-02911-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/28/19
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

STATEMENT OF THE CASE:

On January 11, 2021, the claimant filed an appeal from the January 7, 2021, (reference 02) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on March 12, 2021. Claimant participated. Employer did not register for the hearing and did not participate.

ISSUES:

Is the claimant partially unemployed and available for work, and if so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in September 2019. Claimant started working as a substitute teacher. Claimant also works for a church two days per week.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. Employer closed its building for in person classes and had no work available for claimant. Claimant did not work during the summer. Claimant started working again on August 13, 2020.

Claimant has other non-educational wages in her base period that make her monetarily eligible for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's availability for work with this employer is moot.

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 96.1A, subsection 38, paragraph "b", subparagraph (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. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the

same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The legislature has provided a specific rule that applies to substitute teachers holding that this category of worker, among others, is not considered to be unemployed within the meaning of the law when the only base period wage credits are related to "on-call" work. When an individual is hired to work "on-call" the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the sporadic availability of available work as no regular hours are guaranteed, including during school breaks. Inasmuch as the employer providing the on-call work is offering the same terms of employment as contemplated at hire, no benefit charges shall be made to its account.

However, there are other wages in the base period that make claimant eligible for benefits. Accordingly, benefits are allowed if the claimant is otherwise eligible and the account of South Sioux City Community School District shall not be charged.

DECISION:

The January 7, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot as she has other wages in the base period. Benefits may be allowed if claimant is otherwise eligible and the account of South Sioux City Community School District shall not be charged.



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

March 25, 2021
Decision Dated and Mailed

cal/scn