

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ANITA L FLEMING-RIFE**  
Claimant

**APPEAL NO. 20A-UI-08360-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**OC: 05/03/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4-5 – Reasonable Assurance  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.19(38) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 9, 2020, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 15, 2020. Claimant participated personally. Employer participated by Rhonda Wagner and Nicole Wichman.

**ISSUES:**

Whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year?

Whether claimant is able and available for work?

Whether claimant is totally, partially, or temporarily unemployed?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: claimant was employed as a substitute teacher for the Des Moines Independent Community School District during the 2019 – 2020 school year. As a sub, claimant is not guaranteed any hours, but is called when a position is open, and asked if they wish to take the open position for the needed period of time. This position continues in the present school year.

Employer stated that claimant remains on employer's rolls of potential substitutes. Employer further stated that they emailed claimant information about learning to conduct classes from home.

Claimant stated that she would not be teaching this year, as she is in a high risk category. She stated that she did not receive the emails sent from employer, and did not receive a phone call

in support of the emails. Claimant stated that she would work in another environment but appeared surprised to learn that remote teaching opportunities continue to be available.

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

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 96.4(5)b 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:

b. Benefits based on service in any other capacity for 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 terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

The claimant in this matter worked exclusively in an as-needed position where no hours had been guaranteed. Claimant continues to be in that position. To the extent that claimant did not receive hours from the date of her original filing through the end of the spring semester, claimant was not guaranteed any hours and did not show a standard, consistent amount of hours she had worked such that an administrative law judge could find reduced hours or unemployment. As claimant went multiple months, both for health and accreditation reasons without any work, the administrative law judge cannot find a reduction of hours. As claimant is not unemployed, she is not eligible for benefits.

*Note to Claimant:* Even though 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. **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>.

**DECISION:**

The decision of the representative dated July 9, 2020, reference 02 is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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Blair A. Bennett  
Administrative Law Judge

September 17, 2020  
Decision Dated and Mailed

bab/sam