

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN E OWEN

Claimant

AMES COMMUNITY SCHOOL DIST

Employer

APPEAL 21A-UI-03081-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Respondent (4R)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Admin. Code r. 871-24.22(2)*i* – On-call and Substitute Workers
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
PL 116-136, Sec. 2107 – Federal Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the January 7, 2021 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 15, 2021, at 10:00 a.m. Claimant participated. Employer participated through Kristin Johnson, Director of Human Resources. Employer's Exhibits 1 – 4 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether the claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.
Whether claimant is a substitute teacher.
Whether claimant has been overpaid benefits.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.
Whether claimant is eligible for Pandemic Emergency Unemployment Compensation.
Whether claimant is eligible for Lost Wage Assistance.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed as a substitute teacher and an assessment cadre member with Ames Community School District since September 7, 2017. Claimant had the ability to accept or decline assignments. Claimant was on the substitute list for the 2019/2020 school year but not for the 2020/2021 school year.

Claimant filed an initial claim for benefits effective March 15, 2020. During her base period, claimant earned wages as an on-call worker with the University of Iowa and as a substitute teacher for both the Gilbert and Ogden Community School Districts. Claimant was also employed as a part-time Store Manager with Pumpkin Patch; this employment was not on-call. The store closed due to Covid-19. After reopening, the Pumpkin Patch did not have work available for claimant until December 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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(3) provides:

Benefits 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(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.

Iowa Admin. Code r. 871-24.52(10) provides:

(10) Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2)"I"(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)"I"(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)"I"(3) if they are:

(1) Able to and available for work.

(2) Making an earnest and active search for work each week.

(3) Placing no restrictions on their employability.

(4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

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.

While claimant's work for employer was on-call, she also earned wages during her base period that were not from on-call work. Claimant is monetarily eligible based on non-on-call wages earned with the Pumpkin Patch during the base period. Accordingly, benefits may be allowed if the claimant is otherwise eligible.

The account of Ames Community School District (Account #103505-000) shall not be charged.

The issue of whether claimant's weekly benefit amount should be adjusted based upon the exclusion of her on-call wages with employer will be remanded to Iowa Workforce Development Benefits Bureau for an investigation and decision. The issue of overpayment will also be remanded to the Benefits Bureau for a determination depending upon the benefit amount adjustment.

Because claimant is not disqualified from receiving benefits, the issue of overpayment is moot. To the extent claimant is eligible for regular unemployment insurance benefits, she is also eligible for Federal Pandemic Unemployment Compensation, Pandemic Emergency Unemployment Compensation and Lost Wage Assistance.

DECISION:

The January 7, 2021 (reference 02) unemployment insurance decision is modified in favor of appellant. Claimant's on-call status renders availability for this employment moot because she has other non-on-call wages in the base period. Benefits may be allowed if claimant is otherwise eligible. The account of Ames Community School District (account #103505-000) shall not be charged. Claimant is eligible for Federal Pandemic Unemployment Compensation, Pandemic Emergency Unemployment Compensation and Lost Wages Assistance to the extent that she is eligible for regular unemployment insurance benefits.

REMAND:

The issue of whether claimant's weekly benefit amount should be adjusted based upon the exclusion of her on-call wages with employer is remanded to Iowa Workforce Development Benefits Bureau for an investigation and decision. The issue of overpayment is also remanded to the Benefits Bureau for a determination depending upon the benefit amount adjustment.



Adrienne C. Williamson
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March 30, 2021
Decision Dated and Mailed

acw/scn