

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MORGAN A BELL**  
Claimant

**APPEAL NO. 21A-UI-06775-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAMPTON DUMONT COMMUNITY SCH  
DISTRICT**  
Employer

**OC: 03/29/20**  
**Claimant: Respondent (2)**

Iowa Code § 96.4-5 – Reasonable Assurance  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Admin. Code r. 871-24.52(10) – Substitute Teacher

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated February 23, 2021, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 13, 2021. Employer participated by Anne Lewis. Claimant failed to respond to the hearing notice and did not participate.

**ISSUES:**

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

Whether claimant is a substitute teacher?

Whether claimant is able and available for work?

Whether claimant is totally, partially, or temporarily unemployed?

Is the employer's account subject to charge?

**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 para educator for the Hampton Dumont Community School District during the 2019 – 2020 school year. Claimant worked in this on call capacity from December 2019 through March 16, 2020 when the district closed the school for the year as a result of Covid. After the school year ended, employer offered claimant

a full time job in the capacity of a secretary for the 2020-2021 academic year. Claimant went full time for employer in the secretarial capacity on July 29, 2020.

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

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.

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.

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. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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. 871-24.52(10)e provides:

(10) Substitute teachers.

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).

The claimant in this matter was hired as an on call para educator. As such, she does not need to have a teaching license. Rather, claimant fits within the spectrum of school workers who are not teachers. She was given an altogether different position by employer for the 2020-21 school year. She did not have reasonable assurance of the same job; but does not fall under the reasonable assurance provisions as an on call part-time employee with no assurance of any hours at any time.

Claimant did not have a reasonable expectation of working any set period of hours throughout the school year or throughout the summer hours. She is therefore not eligible for benefits as a part time worker.

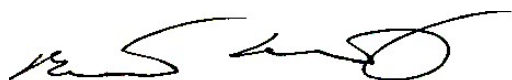
Claimant did not have a full time job in addition to this part time on call job, thus she is not covered by supplemental employment provisions.

Because the claimant had no assurances at any time as to hours as an on call part-time employee, the claimant is not considered partially unemployed. Benefits are denied.

**DECISION:**

The decision of the representative dated February 23, 2021, reference 01 is reversed. Claimant is not eligible to receive unemployment insurance benefits as a part-time on-call employee.

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

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May 20, 2021  
Decision Dated and Mailed

bab/kmj