

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**STACEY D JONES**

Claimant

**APPEAL NO. 21A-UI-06777-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAMPTON DUMONT COMMUNITY SCHOOL  
DISTRICT**

Employer

**OC: 05/03/20**

**Claimant: Respondent (2)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.19(38) – Total and Partial Unemployment

Iowa Code § 96.4-5 – Reasonable Assurance

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 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on May 13, 2021. Claimant participated personally. Employer participated by Anne Lewis.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

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

Is claimant a substitute teacher?

**FINDINGS OF FACT:**

The claimant currently works for Hampton-Dumont School District, a base period employer, as a full time bus driver. This contract was begun in August of 2020 and was a different contract than he'd held during the previous school year.

Claimant worked as a full time custodian for employer until September 30, 2019. He retired at that time. He was then rehired in February 2020 as a part-time on-call bus driver, and as a

substitute custodian when needed. Claimant would drive students to events and fill in for custodians when they were off sick. Claimant worked this on call job until school closed down. He did continue to get some part time work with employer even after the school had shut down.

Claimant was then rehired by employer in August, 2020 as a full time bus driver working a steady route.

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

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the period following the filing of his original claim on May 3, 2021.

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 96.19(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.

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:

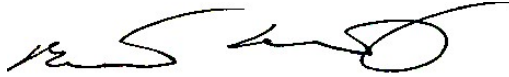
School definitions.

(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.

Because the claimant was employed as a part time employee with no set hours until August 2020, claimant is not seen to have the hours reduced and is not partially unemployed during the period after filing his original claim until he was hired full time in August 2020. Benefits are withheld.

**DECISION:**

The February 23, reference 02, decision is reversed. The claimant is not partially unemployed and benefits are withheld.



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Blair A. Bennett  
Administrative Law Judge

May 20, 2021  
Decision Dated and Mailed

bab/kmj