

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KIENDRA PHANFIL**  
Claimant

**APPEAL 21A-UI-15664-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST DES MOINES COMMUNITY SCH  
DIST**  
Employer

**OC: 06/06/21**  
**Claimant: Respondent (4R)**

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Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment  
Iowa Admin. Code r. 871-24.22(2)i(1) – On Call Work  
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

**STATEMENT OF THE CASE:**

Employer filed an appeal from the July 7, 2021 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 2, 2021, at 10:00 a.m. The claimant did not participate. Employer participated through Director of Human Resources Megan Thole. Exhibits 1, 2, and 3 were received into the record. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed?  
Whether 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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked as an on-call substitute teacher for the employer, West Des Moines Community School District, from March 27, 2019 until she separated from employment on August 5, 2021, when she quit. The employer provided a copy of her assignment and call record history. (Exhibits 2 and 3) The employer also provided a copy of an email the claimant sent to Human Resources Secretary/ Substitute Caller Jackie Armstrong on August 5, 2021, that constitutes her resignation from employment. (Exhibit 1) Ms. Thole testified the nature of the claimant's work did not change on June 6, 2021.

The claimant filed an initial claim for unemployment insurance benefits effective June 6, 2021. The claimant's weekly benefit amount is \$494.00.

Employer	2020/1	2020/2	2020/3	2020/4
West Des Moines School District	420		70	
Des Moines Independent School District	4185		1106	9635
Ross Dress for Less Inc	354	1974	2980	743

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's employment with West Des Moines School District was on-call and cannot be considered as part of her base period wages. As a result, the employer is not subject to charge for benefits.

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 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 Admin. 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 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

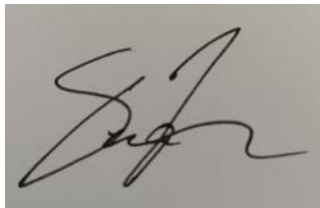
The legislature has provided a specific rule that applies to on-call workers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. When an individual is hired 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. The claimant has other wages she received from the Des Moines Public School District and Ross Dress for Less Inc. Without the claimant's testimony, it is impossible to determine the nature of the work she performed for these employers.

**DECISION:**

The July 7, 2021 (reference 01) unemployment insurance decision is modified in favor of the appellant. West Des Moines School District shall not be charged (# 103231). Benefits are granted.

**REMAND:**

The administrative law judge is remanding to the Benefits Bureau the determination of whether the claimant's work with Des Moines Independent Community School District is similarly on-call in nature. The administrative law judge is also remanding the re-determination of the claimant's weekly benefit amount given these determinations regarding her base period wages.



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Sean M. Nelson  
Administrative Law Judge  
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September 14, 2021  
Decision Dated and Mailed

smn/scn