

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KAREN S KELLOGG

Claimant

AMES COMMUNITY SCHOOL DIST

Employer

APPEAL NO. 21A-UI-07580-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

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 March 10, 2021, reference 05, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 25, 2021. Claimant participated personally. Employer participated by Kristin Johnson.

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 Ames Community School District, a base period employer, part time as a substitute teacher. She is not a contracted employee. She has worked in this capacity for many years.

In March 2020 employer shut down the in class portion of school for the year. Claimant has not worked as a substitute teacher since March of 2020 through the rest of the 2020 school year.

Employer emailed claimant in July of 2020 (as they do every year) asking claimant if she was planning on returning for the next school year. Claimant did not respond to this letter to indicate that she would return.

Claimant stated that her doctor instructed her not to return to her substitute teaching until further notice. Claimant did not forward this information to employer. Claimant chose not to work as a substitute for employer in the 2020-2021 school year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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. 871-23.43(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....

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.

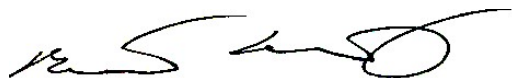
(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and

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.

As claimant is working as an on call substitute teacher, she is not guaranteed any hours. This lack of a guarantee of hours means that claimant was not eligible to receive unemployment benefits throughout the end of the 2019-2020 school year. Regarding the summer, employer did extend reasonable assurance to claimant in 2020 and in previous years such that claimant knew she had the opportunity to return to school in the fall of 2020 if she so chose. Claimant chose not to return in the fall as she was not comfortable in returning to the school environment during Covid. Benefits are denied.

DECISION:

The March 10, 2021, reference 05, decision is reversed. The claimant is not partially unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

June 4, 2021
Decision Dated and Mailed

bab/kmj

NOTE TO CLAIMANT: If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at

<https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at
<https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>