

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSIE M MARTINHOLMAN
Claimant

APPEAL 21A-UI-04619-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVENPORT COMMUNITY SCH DIST
Employer

OC: 04/26/20
Claimant: Appellant (4R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 29, 2021, (reference 02) unemployment insurance decision that denied benefits based upon a finding that claimant was still employed for the same hours and wages as in her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on April 12, 2021. The claimant participated. The employer participated through human resources generalist Shelli Godke. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant able to and available for work?
Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on November 30, 2016 as an on-call substitute teacher.

Claimant restricted her ability to accept shifts from December 7, 2020 through January 4, 2021, because she was exposed to individuals who tested positive for COVID-19 and self-quarantined during this period.

Claimant's established weekly benefit amount is \$371.00. Claimant filed her initial claim for benefits on April 26, 2020. She filed an additional claim on November 15, 2020, and received regular unemployment benefits through the week ending January 9, 2021.

Claimant's employment in her base period contains wages earned with non-educational institution employers. The issue of whether the claimant has other non-educational wages in

her base period sufficient to be monetarily eligible for benefits is remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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. 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).

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. Claimant's employment as a substitute teacher is considered "on-call" work; therefore, claimant is not eligible for unemployment insurance benefits based upon her employment with Davenport Community School District. However, claimant may be monetarily eligible based on non-education wages earned during the base period. Accordingly, benefits may be allowed if the claimant is otherwise eligible and the account of Davenport Community School District (account # 103399) shall not be charged.

DECISION:

The January 29, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant's on-call status renders availability for this employer moot as she has other non-education wages in the base period. Benefits may be allowed if claimant is otherwise eligible. The account of employer Davenport Community School District (Account #103399) shall not be charged.

REMAND:

The issue of whether the claimant has other non-educational wages in her base period sufficient to be monetarily eligible for benefits pursuant to Iowa Code §96.4(3) is remanded to the Benefits Bureau for an initial investigation and determination.



Stephanie Adkisson
Administrative Law Judges
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

April 19, 2021
Decision Dated and Mailed

sa/scn