

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA LEMKE
Claimant

OSKALOOSA COMM SCHL DIST
Employer

APPEAL 21A-UI-07386-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (5)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On March 11, 2021, Amanda Lemke (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 9, 2021 (reference 01) that denied benefits as of March 15, 2020 based on a finding claimant was not available for work within the meaning of the law.

A telephone hearing was held on May 21, 2021. The parties were properly notified of the hearing. Claimant participated personally. Oskaloosa Comm Schl Dist (employer/respondent) participated by School Business Official Chad Vink.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?
- II. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

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

Claimant began working for employer as a substitute teacher on October 14, 2019. Claimant is still employed by employer as a substitute teacher. In this position, work is offered as it becomes available and claimant is free to accept or reject it. She also performs substitute teaching work for another employer. Claimant has not been searching for regular, full-time work since she began working as a substitute teacher. The base period for the claim is from the fourth quarter of 2018 through the third quarter of 2019. Claimant was employed full-time during that period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated March 9, 2021 (reference 01) that denied benefits as of March 15, 2020 based on a finding claimant was not available for work within the meaning of the law is MODIFIED with no change in effect.

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. Code r. 871-24.22(2)i provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(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.

Claimant has accepted only on-call employment as a substitute teacher and has not searched for regular, full-time work since October 2019. She is therefore not genuinely attached to the labor market and does not meet the availability requirements to be eligible for benefits under applicable law. Benefits are therefore denied effective March 15, 2020.

The decision is modified solely to reflect that the denial is made under Iowa Code section 96.4(3) rather than Iowa Admin. Code 871-24.22(2)I(3), as claimant's base period did not consist solely of on-call work.

DECISION:

The decision dated March 9, 2021 (reference 01) that denied benefits as of March 15, 2020 based on a finding claimant was not available for work within the meaning of the law is MODIFIED with no change in effect. Claimant is ineligible for benefits effective March 15, 2020.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 28, 2021
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.