

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL L MOLLEY
Claimant

APPEAL 21A-UI-07809-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KIRKWOOD COMMUNITY COLLEGE
AREA 1**
Employer

**OC: 01/17/21
Claimant: Appellant (1)**

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Michael Molley (claimant) appealed an Iowa Workforce Development March 12, 2021, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Kirkwood Community College (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2021. The claimant participated personally. The employer participated by Sheri Hlavacek, Human Resources Supervisor, and Dave Hunt, Dean of Distance Learning.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is between successive terms with an educational institution whether the claimant had reasonable assurance of employment, whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an educational institution. The claimant was hired on November 11, 2009, as a part-time adjunct instructor in the field of American Sign Language (ASL). He taught every fall and spring semester since he was hired.

There was low enrollment for his spring 2021 web live class and it was cancelled. On or about January 12, 2021, the employer offered the claimant a different ASL class that would be taught online. It was asynchronous, so the claimant did not have to keep a class time. The course design plan had already been developed by another employee. The claimant would be paid the same amount as the web live class. The claimant accepted the assignment. He asked for a copy of the content on January 14, 2021. A copy of the content was sent to the claimant on January 19, 2021. The semester was set to start on January 24, 2021.

Later, the claimant wanted the employer to rescind the offer so he would have fewer headaches when applying for unemployment insurance benefits. The claimant thought getting the class ready would take some work. The employer did not rescind the offer. It reassigned the work to another employee who was willing to teach the class. The claimant said he felt uncomfortable teaching ASL to students because of core requirements.

REASONING AND CONCLUSIONS OF LAW:

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(16) provides:

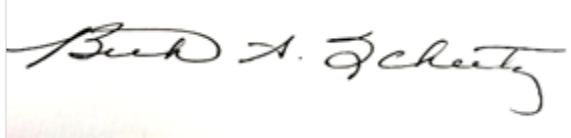
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). A worker is considered to be unavailable for work when an employee limits working hours for a particular reason. In this case, the claimant limited his working hours because the course work was harder. Limiting working hours made the claimant unavailable for work as of January 17, 2021.

DECISION:

The March 12, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective January 17, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.



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

June 9, 2021
Decision Dated and Mailed

bas/kmj