

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SCOTT L SHAY
Claimant

CEDAR RAPIDS COMM SCHOOL DIST
Employer

APPEAL NO. 20A-UI-07324-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/16/19
Claimant: Appellant (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

Scott Shay filed a timely appeal from the June 25, 2020, reference 08, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that Mr. Shay was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on August 6, 2020. Mr. Shay participated. The employer submitted a single exhibit, pay records, in lieu of participation, which document was received into evidence as Exhibit 1. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning March 15, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning March 15, 2020.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

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

Scott Shay is employed by the Cedar Rapids Community School District as a bus driver. Mr. Shay began with the District in February 2018 and last performed work for the District on or about Friday, March 13, 2020. Before the COVID-19 pandemic arrived in Iowa, Mr. Shay worked a morning route from 7:00 a.m. to 9:30 a.m. and an afternoon route from 2:00 p.m. to about 4:30 or 4:45 p.m. Mr. Shay's work days were Monday through Friday when school was in session. Mr. Shay also worked in additional driving assignments for band and athletic events as needed. Mr. Shay's wage is \$18.38 per hour. Before the COVID-19 pandemic, Mr. Shay averaged 25 hours per week and 459.50 in weekly wages.

During the District's spring break, March 16-20, 2020, the District closed schools for the remainder of the school year. The scheduled last day of school was June 1, 2020. The closure temporarily eliminated the District's need for Mr. Shay's services as a bus driver. Mr. Shay

learned of the closure on March 18 or 19, 2020. The District did not pay wages to Mr. Shay for the week of spring break. Mr. Shay used a week's worth of accumulated vacation pay benefit, \$459.50, for that week. The District paid Mr. Shay wages of \$459.50 for each of the weeks between March 22, 2020 and May 30, 2020. The District paid Mr. Shay \$91.90 in wages for the work he performed on June 1, 2020. Mr. Shay did not earn additional wages and the District did not pay additional wages until Mr. Shay participated in a three-hour training on or about July 17, 2020.

Before the school year ended, the District contacted Mr. Shay and asked whether he was interested in returning to perform similar duties when the new school year started. From that point onward Mr. Shay understood that the District intended to have him return to perform similar duties in the new school year, pursuant to the route bidding process.

Mr. Shay established an "additional claim" for unemployment insurance benefits that was effective March 15, 2020. The additional claim was based on a claim year that began for Mr. Shay on June 16 2019. In connection with the additional claim, Mr. Shay received regular benefits for the six weeks between March 15, 2020 and April 25, 2020. Mr. Shay reported \$459.00 in vacation pay for the week that ended March 21, 2020 and received \$8.00 in regular benefits for that week. Mr. Shay misreported his wages when he made his weekly claims for the five weeks between March 22, 2020 through April 25, 2020. For each of those weeks, Mr. Shay underreported the wages as \$229.00, rather than the correct \$459.00 amount. In addition, Mr. Shay reported the wage as holiday pay, rather than as regular wages. Based on the misreported wages, IWD paid \$354.00 in regular benefits for the four weeks between March 22, 2020 and April 18, 2020. Based on the misreported wages, IWD paid \$347.13 in regular benefits for the week that ended April 25, 2020. Mr. Shay reached his maximum benefit amount and exhausted regular benefits during the week that ended April 25, 2020.

Effective April 26, 2020, Mr. Shay began receiving Pandemic Emergency Unemployment Compensation (PEUC), with the weekly benefit amount set at \$467.00. For the week that ended May 2, Mr. Shay accurately reported the weekly wage amount, mischaracterized the wages as holiday pay, and received \$124.00 in PEUC. For the four weeks between May 3, 2020 and May 30, 2020, Mr. Shay underreported the wage amount as \$229.00, rather than \$459.00, mischaracterized the wages as holiday pay, and received \$354.00 in PEUC benefits. For the week that ended June 6, 2020, Mr. Shay underreported his weekly wages as zero, rather than \$92.00, and received \$467.00 in PEUC benefits. For the week that ended June 13, 2020, Mr. Shay overreported his wages as \$94.00, rather than zero, and received \$467.00 in PEUC benefits.

For each of the weeks for which IWD paid regular or PEUC benefits, IWD also paid Mr. Shay \$600.00 in Federal Pandemic Unemployment Compensation Benefits.

Mr. Shay's benefit year expired on June 13, 2020.

REASONING AND CONCLUSIONS OF LAW:

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) 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

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

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.

The weight of the evidence establishes that Mr. Shay has at all relevant times been physically and mentally able to work and available for work with the District.

The evidence establishes that Mr. Shay was temporarily laid off during the benefit week that ended March 21, 2020, which coincided with the District's spring break. During that week, the District has no work for Mr. Shay and paid no wages to Mr. Shay. Mr. Shay is eligible for benefits for the week that ended March 21, 2020, provided he meets all other eligibility requirements.

The weight of the evidence establishes that Mr. Shay was partially unemployed within the meaning of the law for each of the weeks between March 22, 2020 and June 6, 2020. During the 10 weeks between March 22, 2020 and May 30, 2020, the employer had no work for Mr. Shay, paid \$459.50 in wages, but the wages were less than the \$467.00 weekly benefit amount plus \$15.00. During the week that ended June 6, 2020, the employer had no work for Mr. Shay, paid \$92.00 in wages, and the wages were less than the \$467.00 weekly benefit amount plus \$15.00. Based on the partial unemployment, Mr. Shay is eligible for benefits for the period of March 22, 2020 through June 6, 2020, provided he meets all other eligibility requirements.

Mr. Shay was also temporarily laid off effective June 1, 2020. Based on the temporary layoff, Mr. Shay is eligible for benefits for the period beginning May 31, 2020, provided he is otherwise eligible.

In response to the economic impact of the COVID-19 pandemic, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers. Based on this Agency pronouncement, the employer's account will not be charged for any benefits paid to Mr. Shay for the period of March 22, 2020 through June 13, 2020 in connection with the COVID-19 based claim.

This matter will be remanded to the Benefits Bureau for determination of whether the claimant received vacation pay for the benefit week that ended March 21, 2020 that is deductible from unemployment insurance benefits.

This matter will be remanded to the Benefits Bureau for determination of the correct weekly benefit amount for all relevant claim weeks, based on the corrected weekly wage amounts as set forth in the Findings of Fact.

This matter will be remanded to the Benefits Bureau for entry of overpayment decisions based on the claimant's misreported wages.

Finally, this matter will be remanded to the Benefits Bureau for determination of whether the claimant is disqualified for benefits for the period beginning May 31, 2020 based on the between-academic-terms disqualification provision set forth at Iowa Code section 96.4(5).

DECISION:

The June 25, 2020, reference 08, decision is modified in favor of the claimant/appellant as follows. The claimant was able to work and available for work from the March 15, 2020 additional claim effective date through the June 13, 2020 claim year expiration date. The claimant was temporarily unemployed during the week that ended March 21, 2020. The claimant was partially unemployed during the 11 weeks between March 22, 2020 and June 6, 2020. The claimant was also temporarily unemployed/laid off for the period beginning May 31, 2020. The claimant is eligible for benefits for the period between March 15, 2020 through June 13, 2020, provided he meets all other eligibility requirements. Based on the IWD announcement that employer's will not be charged for COVID-19 based claims, the employer's account will not be charged for benefits paid to the claimant for the period of March 15, 2020 through June 13, 2020, the benefit year expiration date.

This matter is remanded to the Benefits Bureau to address the following issues:

- (1) Determination of whether the claimant received vacation pay for the benefit week that ended March 21, 2020 that is deductible from unemployment insurance benefits.
- (2) Determination of the correct weekly benefit amount for all relevant claim weeks, based on the corrected weekly wage amounts as set forth in the Findings of Fact.
- (3) Entry of overpayment decisions based on the claimant's underreported and misreported wages.
- (4) Determination of whether the claimant is disqualified for benefits for the period beginning May 31, 2020 based on the between-academic-terms disqualification provision set forth at Iowa Code section 96.4(5).



James E. Timberland
Administrative Law Judge

August 24, 2020
Decision Dated and Mailed

jet/mh