

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNE L LANDAVERDE

Claimant

PLEASANT VALLEY COMM SCHOOL DIST

Employer

APPEAL 20R-UI-00213-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/20/19

Claimant: Appellant (4)

Iowa Code § 96.19(38) – Total, partial unemployment

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

Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On November 14, 2019, Anne Landaverde (claimant/appellant) filed a timely appeal from the November 6, 2019 (reference 01) unemployment insurance decision that determined she was not eligible to receive unemployment insurance benefits. Specifically, it determined she was still employed at the same hours and wages as in the original contract of hire.

A telephone hearing was set for December 9, 2019 at 11:00 a.m. The parties were properly notified of the hearing. However, the claimant failed to provide a telephone number at which she could be reached for the scheduled hearing. As such, no hearing was held and a default order was entered on December 10, 2019.

On December 18, 2019, claimant filed an appeal of the December 10 default decision with the Employment Appeal Board. On January 3, 2020, the Employment Appeal Board remanded this matter for a new hearing before an administrative law judge.

A telephone hearing was set for January 28, 2020 at 9:00 a.m. The parties were properly notified of the hearing. Claimant participated personally. Pleasant Valley Comm School Dist (employer/respondent) participated by Chief Financial Officer Mike Clingsmith.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?

- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?

FINDINGS OF FACT:

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

Claimant is employed by employer as an on-call substitute teacher. Claimant began working for employer on September 4, 2019. Claimant has worked two days for employer: on September 4 and December 17, 2019. Her rate of pay has not changed. Openings for substitute teachers are posted on employer's online system. Claimant has access to that system and may sign up for substitute openings as she wishes.

Wage records show claimant's wages in the base period consist almost entirely of full-time employment. Claimant was previously employed full-time at Davenport Community School District. She separated from employment there in April 2019 and was found to have voluntarily quit with good cause attributable to that employer. See December 3, 2019 (reference 04) unemployment insurance decision. She is currently signed up to substitute teach with several school districts. Claimant continues to search and is able and available for full-time employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the November 6, 2019 (reference 01) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits is MODIFIED in favor of claimant.

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 96.19, 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)(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) states:

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 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.

Because claimant was hired to work only on-call or as-needed, she is not considered unemployed within the meaning of the law as it pertains to this employer. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Claimant is not eligible for benefits as to this employer, as she is still employed at the same hours and wages as in the original contract of hire. As such, this employer's account shall not be charged.

However, since there are other wages in claimant's base period, the monetary eligibility of the claimant needs to be examined to determine eligibility based upon the other employment, and the lack of regular work with this on-call employer is moot. Accordingly, benefits may be allowed if the claimant is otherwise monetarily eligible and the account of this employer shall not be charged.

DECISION:

The November 6, 2019 (reference 01) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits is MODIFIED in favor of claimant.

Claimant is not eligible for benefits as to this employer, as she is still employed at the same hours and wages as in the original contract of hire. As such, this employer's account shall not be charged. However, because claimant has wages other than on-call wages with an educational institution in her base period, she is eligible for benefits, provided she meets all other eligibility requirements.

Andrew B. Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/rvs