

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIELLE C PRITCHARD
Claimant

APPEAL NO. 20A-UI-05673-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON COMMUNITY SCHOOL DIST
Employer

OC: 03/15/20
Claimant: Respondent (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 3, 2020, reference 01, decision allowed benefits to the claimant beginning March 15, 2020, provided she is otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily laid off. After due notice was issued, a hearing was held on July 2, 2020. Claimant Danielle Pritchard participated. Cindy McAleer represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCI, DBRO, KPYX, and WAGE-A.

ISSUES:

Whether the claimant has been able to work and available for work since March 15, 2020.
Whether the claimant has been temporarily unemployed and/or partially unemployed since March 15, 2020.
Whether the claimant is disqualified for benefits based on the between academic terms disqualification provision set forth at Iowa Code section 96.4(5).
Whether the claimant is overpaid regular benefits.
Whether the claimant has been overpaid Pandemic Emergency Unemployment Compensation.
Whether the claimant is overpaid Federal Pandemic Unemployment Compensation.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Danielle Pritchard established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development (IWD) set Ms. Pritchard's weekly benefit amount at \$255.00. At the time of the July 2, 2020 appeal hearing, Ms. Pritchard had made consecutive weekly claims throughout the period of March 15, 2020 through June 27, 2020. IWD paid Ms. Pritchard \$255.00 in regular benefits for each of the nine weeks between March 15, 2020 and May 16, 2020. IWD paid Ms. Pritchard \$109.41 in regular benefits for the week that ended May 23, 2020, at which time Ms. Pritchard exhausted her eligibility for regular benefits. The regular benefits paid to Ms. Pritchard for the 10 weeks between March 15, 2020 and May 23, 2020 totaled \$2,404.41. IWD then paid Ms. Pritchard \$255.00 in weekly Pandemic Emergency

Unemployment Compensation (PEUC) for five weeks between May 30, 2020 and June 27, 2020. The PEUC benefits totaled \$1,275.00. IWD also paid Ms. Pritchard \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for each of the 13 weeks between March 15, 2020 and June 17, 2020. The FPUC benefits totaled \$7,800.00.

Ms. Pritchard is currently employed by Clinton Community School District as a part-time school van driver. Though the employer characterizes Ms. Pritchard's position as a "substitute" position, Ms. Pritchard regularly performed work for the District week after week when school was in session. Ms. Pritchard began her employment in March 2019. Ms. Pritchard was assigned to transport students with special needs. Ms. Pritchard's driving duties included transporting a student who resided in Clinton to a school in Illinois. Ms. Pritchard last performed bus driving duties for the District on Monday, March 16, 2020. Ms. Pritchard worked about two hours and 45 minutes that day. Prior to March 16, 2020, Ms. Pritchard usually worked 18 to 30 hours per week. Ms. Pritchard would work Monday through Friday. She would start her work date at 7:00 a.m. or 7:15 a.m. and complete her morning duties by 9:30 a.m. She would then return at 1:00 p.m. or 1:15 p.m. to begin her afternoon duties and would complete her afternoon duties by 3:45 p.m. Chris Turner, Transportation Director, was Ms. Pritchard's supervisor. Ms. Pritchard's wage is \$16.22 per hour.

On March 15, 2020, the Iowa Department of Education determined that Iowa schools should temporarily close to prevent community spread of the novel coronavirus. At that time, the Clinton Community School District was about to start its Spring Break, which fell during the week of March 15-21, 2020. During that week, the Clinton Community School District decided it would close campuses effective Monday March 23, 2020, which was supposed to be the first day of classes following Spring Break. The District distributed an automated message by text message and/or email to alert staff to the closure. On Monday, March 16, 2020, Ms. Pritchard and Mr. Turner spoke regarding the school closure and the need to transport the one student to and from the Illinois that day. Mr. Turner transported the student to the school and Ms. Pritchard collected the student from the school. Ms. Pritchard's wages for that 2.75 hours of work on March 16 totaled \$44.60. After Spring Break, the Clinton Community School District transitioned to online classes. Classes continued online until June 2, 2020.

The District has had no other work for Ms. Pritchard since March 16, 2020. Ms. Pritchard has remained available for work. Aside from the wages the District paid to Ms. Pritchard for her work on March 16 and aside from additional wages the employer paid to Ms. Pritchard for 16 hours of training she completed in February 2020, the District had made no other payments to Ms. Pritchard for the period beginning March 15, 2020.

On April 15, 2020, Ms. Pritchard and the District entered into a written agreement whereby Ms. Pritchard will return to perform additional driving work for the District during the 2020-2021 academic year. The specifics of the proposed work assignment have not been determined. Ms. Pritchard plans to work toward obtaining a commercial driver's license, which might provide different opportunities. Ms. Pritchard will have to bid on driving routes to see what is available for her and may end up with only half the number of work hours she received during the 2019-2020 academic year.

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.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code Section 96.3(3) provides:

Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

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 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5 .Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services

for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution *in any capacity* under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "*educational service agency*" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

871 IAC 24.52(4) provides as follows:

Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph "e."

The evidence in the record establishes that Ms. Pritchard was laid off effective March 16, 2020 due to the District's COVID-19 based school closure. Ms. Pritchard has continued to be able to work and available for work to the same extent as before the layoff. Ms. Pritchard was partially unemployed during the week of March 15-21, 2020, during which week the employer provided only 2.75 hours of work. In light of the state and the District's decisions to close schools, Ms. Pritchard did not have reasonable assurance during the week of March 15-21, 2020 that she would be returning after Spring Break to perform the same or similar work. Nor does Ms. Pritchard have reasonable assurance that she will be returning to the same or similar work during the 2020-2021 academic year. The present understanding is that she might get half the

work hours she received prior to the layoff. Ms. Pritchard is eligible for benefits for the period beginning March 15, 2020, provided she is otherwise eligible, and continues to be eligible for benefits, provided she meets all other eligibility requirements.

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 account of Clinton Community School District will not be charged for benefits paid to Ms. Pritchard in connection with the COVID-19 based claim that was effective March 15, 2020.

DECISION:

The June 3, 2020, reference 01, is modified in favor of the employer/appellant as follows. The claimant has able to work and available for work since March 15, 2020 and is eligible for benefits beginning March 15, 2020, provided she is otherwise eligible. The claimant was temporarily laid off effective March 16, 2020. The claimant was also partially unemployed during the week that ended March 21, 2020. The claimant continues on temporary layoff. The claimant is not disqualified for benefits for any week since March 15, 2020 based on the between academic terms disqualification provision set forth at Iowa Code section 96.4(5). The employer's account shall not be charged for the COVID-19 based claim that was effective March 15, 2020.



James E. Timberland
Administrative Law Judge

July 16, 2020
Decision Dated and Mailed

jet/scn