

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN C PURK
Claimant

**COMM SCHOOL DIST OF SO TAMA
COUNTY**
Employer

APPEAL 21A-UI-12635-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (4R)

Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Admin. Code r. 871-24.22(2)(i)(1) – Eligibility – On-call workers

STATEMENT OF THE CASE:

Claimant filed an appeal from the May 12, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 30, 2021, at 1:05 p.m. Claimant participated. Employer participated through Lesley Youngbear, Payroll/Benefits. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.
Whether claimant is a substitute teacher or on-call worker.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Community School District of South Tama County as a full-time Bus Driver on August 24, 2015.

Claimant worked for employer as a bus driver during the 20/20/2021 school year. Claimant was contracted to work 35 hours per week (seven hours per day and five days per week) at a rate of \$20.00 per hour. Claimant worked these hours from the beginning of the school year until October 1, 2020.

Beginning October 1, 2020, claimant's hours as a bus driver were reduced to 11 hours per week (five and a half hours per day, two days per week). Due to the reduction in hours driving a bus, claimant also worked for employer as a Custodian. Claimant's work as a custodian was not

pursuant to a contract. Claimant worked an average of 17 hours per week as a custodian beginning October 2020 at a rate of \$13.08 per hour.

From November 15, 2020 through November 28, 2020, employer did not offer in-person classes. As a result, there was no custodial work for claimant to perform. Claimant was paid the wages he would have earned as a bus driver, \$220.00 per week (11 hours per week at a rate of \$20.00 per hour).

From November 29, 2020 through December 19, 2020, claimant worked 11 hours per week as a bus driver and 17 hours per week as a custodian and earned \$446.36 per week.

From December 20, 2020 through January 2, 2021, claimant worked fewer hours due to the Christmas break. Claimant reported gross wages of \$110.00 on his weekly claims for the weeks ending December 26, 2020 and January 2, 2021. Whether claimant was eligible for benefits during this time between school terms should be remanded to the Benefits Bureau for an initial investigation and decision regarding whether he had reasonable assurance.

Beginning January 3, 2021, claimant's hours as a bus driver were increased to 16.5 hours per week (five and a half hours per day, three days per week).

From January 3, 2021 through January 23, 2021, claimant worked 16.5 hours per week as a bus driver and 17 hours per week as a custodian and earned \$556.36 per week.

For the week ending January 30, 2021, claimant worked fewer hours and reported wages of \$220.00. For the week ending February 6, 2021, claimant performed no work and received no wages. On February 6, 2021, employer informed claimant that his services as a custodian were no longer needed. For the week ending February 13, 2021, claimant worked 16.5 hours as a bus driver and earned \$330.00.

Beginning February 14, 2021, claimant's hours as a bus driver were increased; claimant worked 27.5 hours per week (five and a half hours per day and five days per week) as a bus driver and earned \$550.00 per week.

Claimant filed an initial claim for benefits effective November 15, 2020 and weekly claims from November 15, 2020 through April 10, 2021. Claimant's weekly benefit amount is \$369.00. Claimant had no barriers to employment after November 15, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1A(37) 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", unnumbered paragraph (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. R. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

To be partially unemployed for any given week, claimant must work less than 35 hours per week (claimant's regular full-time schedule) and earn less than \$384.00 (claimant's weekly benefit plus \$15). Since November 15, 2020, claimant has not been employed for his regular full-time hours. Whether claimant was partially unemployed must be determined by the wages he earned.

From November 15, 2020 until November 28, 2020, claimant earned \$220.00 per week as a bus driver (11 hours per week x \$20.00 per hour) and no wages from custodial work. Claimant earned less than \$384.00 per week and, thus, is considered partially unemployed from November 15, 2020 until November 28, 2020. Accordingly, benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting wages earned.

From November 29, 2020 through December 19, 2020, claimant earned \$220.00 per week as a bus driver (11 hours per week x \$20.00 per hour) and \$226.36 per week as a custodian (17 hours per week x \$13.08 per hour), totaling \$446.36 per week. Claimant earned more than \$384.00 per week and, thus, is not considered partially unemployed from November 29, 2020 through December 19, 2020. Accordingly, benefits are denied.

From December 20, 2020 through January 2, 2021, claimant earned \$110.00 per week, which is less than \$384.00 per week. Whether claimant is eligible for benefits during a break between two terms will be remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and decision. A determination on claimant's eligibility for benefits between December 20, 2020 and January 2, 2021 is reserved pending the outcome of the reasonable assurance issue on remand.

From January 3, 2021 through January 23, 2021, claimant earned \$330.00 per week as a bus driver (16.5 hours per week x \$20.00 per hour) and \$226.36 per week as a custodian, totaling \$556.36 per week. Claimant earned more than \$384.00 per week and, thus, is not considered partially unemployed from January 3, 2021 through January 23, 2021. Accordingly, benefits are denied.

From January 24, 2021 through January 30, 2021, claimant earned \$220.00. Claimant earned less than \$384.00 and, thus, is considered partially unemployed. Benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting wages earned.

From January 31, 2021 through February 6, 2021, claimant performed no work and received no wages. Claimant was totally unemployed and able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

From February 7, 2021 through February 13, 2021, claimant earned \$330.00 as a bus driver (16.5 hours x \$20.00 per hour). Claimant earned less than \$384.00 and, thus, is considered partially unemployed. Accordingly, benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting wages earned.

Effective February 14, 2021, claimant earned 550.00 per week as a bus driver (27.5 hours per week x \$20.00 per hour). Claimant earned more than \$384.00 per week and, thus, is not considered partially unemployed. Benefits are denied.

The issue of whether the employer will be charged for regular, state-funded unemployment insurance benefits paid due to Covid-19 will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to Covid-19.

DECISION:

The May 12, 2021 (reference 02) unemployment insurance decision is modified in favor of appellant. From November 15, 2020 through November 28, 2020, claimant was partially unemployed; benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting wages earned. From November 29, 2020 through December 19, 2020, claimant was not totally or partially unemployed; benefits are denied.

The issue of whether claimant was partially unemployed from December 20, 2020 through January 2, 2021 is reserved pending the outcome of the issue on remand. From January 3, 2021 through January 23, 2021, claimant was not partially unemployed; benefits are denied. From January 24, 2021 through January 30, 2021, claimant was partially unemployed; benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting wages earned. From January 31, 2021 through February 6, 2021, claimant was totally unemployed and able to and available for work; benefits are allowed provided claimant is otherwise eligible. From February 7, 2021 through February 13, 2021, claimant was partially unemployed; benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting wages earned. Effective February 14, 2021, claimant was not totally or partially unemployed; benefits are denied.

REMAND:

The issue of whether claimant is eligible for benefits from December 20, 2020 through January 2, 2021 is remanded to the Benefits Bureau of Iowa Workforce Development for a determination of whether claimant had reasonable assurance

The issue of whether employer should be charged for the unemployment insurance benefits paid to claimant because of Covid-19 is remanded to the Tax Bureau of Iowa Workforce Development for a determination.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 10, 2021
Decision Dated and Mailed

acw/mh