

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JULIA M STEWART
Claimant

APPEAL NO. 21A-UI-05796-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DALLAS CENTER – GRIMES COMMUNITY
SCHOOL DISTRICT**
Employer

OC: 04/12/20
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Julia Stewart, filed a timely appeal from the February 17, 2021, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that the claimant was still employed in her on-call job in the same capacity as in her original contract of hire and was not available for work within the meaning of the law . After due notice was issued, a hearing was held on April 30, 2021. Claimant participated personally and was represented by attorney Nadine Stille. Michelle Wearmouth represented the employer. There were three appeal numbers set for a consolidated hearing: 21A-UI-057896-JTT, 21A-UI-05797-JTT and 21A-UI-05798-JTT. Exhibits 1 through 5 and A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, WAGE-A and the April 15, 2020 application for Pandemic Unemployment Assistance.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning April 12, 2020.

Whether the employer's account may be charged for benefits for the period beginning April 12, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant commenced employment with Dallas Center – Grimes Community School District as a part-time, on-call substitute teacher in April 2019. The claimant has only performed work for the employer as a part-time, on-call substitute teacher. As a substitute teacher, the claimant was not guaranteed work hours. The employer would notify the claimant when work was available and the claimant would decide whether she wished to accept the work. During the 2019-2020 academic year, the claimant worked in a series of one-day substitute teaching assignments. The claimant most recently worked for the employer on February 28, 2020.

The District discontinued in-person classes effective March 23, 2020 to slow community spread of COVID-19. Prior to the closure, the claimant had been watching the news and had decided to discontinue substitute teaching until the COVID-19 pandemic subsided. The claimant had not agreed to work any substitute teaching assignments for the period beginning March 23, 2020. The employer continued to be without need for the substitute teachers through the June 4, 2020 scheduled end of the school year. The claimant's on-call work for the District did not include work during the traditional summer break between academic years.

On June 4, 2020, the District sent the claimant an electronic Substitute Annual Availability form that indicated the claimant would remain on the active substitute list for the 2020-2021 and requested that the claimant mark and sign the form indicate whether she wished to be considered for further substitute work. On June 4, 2020, the claimant marked, signed, and returned the form to indicate that she was interested in returning for additional substitute teaching work.

The 2020-2021 academic year began on August 27, 2020. Between August 28, 2020 and September 21, 2020, the employer made eight calls to the claimant attempting to provide the claimant with substitute teaching work. The claimant did not answer any of the calls and did not accept any substitute teaching assignments. On September 22, 2020, the employer was able to make contact with the claimant and the claimant advised she would not be subbing at all until the COVID-19 pandemic subsided.

The claimant established an original claim for benefits that was effective April 12, 2020. The base period for the claim consists of the four quarters of 2019. Dallas Center – Grimes Community School District is the sole base period employer. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$132.00. The claimant made weekly claims for each of the weeks between April 12, 2020 and October 10, 2021. The claimant received regular benefits for each of the weeks between April 12, 2020 and July 4, 2020, at which time she exhausted regular benefits. The claimant then received 13 weeks of Pandemic Emergency Unemployment Compensation (PEUC) for the weeks between July 5, 2020 and October 3, 2021, at which time she exhausted PEUC benefits. The claimant also received Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the weeks between April 12, 2020 and July 25, 2020 and received Lost Wages Assistance Payments (LWAP) for each of the weeks between July 26, 2020 and September 5, 2020. During the period of April 1, 2020 through September 5, 2020, Iowa Workforce Development waived the work search requirement. Effective September 6, 2020, IWD re-imposed the work search requirement. The claimant did not look for other employment.

The claimant had also submitted an application for Pandemic Unemployment Assistance (PUA) benefits on April 15, 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. 871-24.22(2)(i) 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.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The claimant has not been available for work within the meaning of the law since she established the original claim for benefits that was effective April 12, 2020. The claimant's base period wages derive exclusively from on-call employment for this one school district. Since the claimant established her original claim for benefits, she has elected not to make herself available for employment with this employer or for any other employer. Benefits are denied effective April 12, 2020. The availability disqualification is ongoing.

DECISION:

The February 17, 2021, reference 01, decision is affirmed. The claimant has not been available for work within the meaning of the law since she established the original claim for benefits that was effective April 12, 2020. Benefits are denied effective April 12, 2020.

This matter is **remanded** to the Benefits Bureau for further action on the claimant's application for PUA benefits as the Benefits Bureau deems appropriate.



James E. Timberland
Administrative Law Judge

August 31, 2021
Decision Dated and Mailed

jet/mh