

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN J GIANFORTE
Claimant

CEDAR RAPIDS ST PIUS X
Employer

APPEAL 21A-UI-06138-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Employer Contributions and Reimbursements

STATEMENT OF THE CASE:

On February 22, 2021, the employer, Cedar Rapids—St. Pius X, filed an appeal on behalf of claimant John J. Gianforte, from the February 10, 2021 (reference 05) unemployment insurance decision that denied benefits effective April 5, 2020, based upon a determination that claimant was unemployed between academic years or terms and was therefore not eligible for benefits.

The administrative law judge reviewed the appeal and the administrative record and was able to resolve the matter without the need for a hearing.

ISSUE:

Is the claimant totally, partially, or temporarily unemployed effective April 5, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for the employer as a substitute teacher during the 2019-20 school year. He works on-call as needed, when work is available for him. Claimant's wages in his base period all appear to be from educational employers. He does not have non-educational wages in his base period.

Based on his wage record, claimant last worked for the employer (prior to filing his claim for benefits) in the first quarter of 2020. In March 2020, Governor Reynolds cancelled in-person classes for what ended up being the remainder of the school year because of the COVID-19 pandemic. The school year was scheduled to end on May 29, 2020. Employer did not have further work available for claimant after in-person classes were cancelled. Employer did not pay claimant after in-person classes were cancelled.

Claimant was given reasonable assurance of continued employment for the 2020-21 school year. He remains employed with the employer now as a substitute teacher, working on-call as needed when work is available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be unemployed for purposes of Iowa employment security law.

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 Admin. Code r. 871-24.22(2)i(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)(c) states:

Substitute teachers.

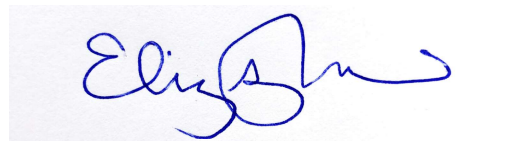
c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)“i”(3).

Because claimant was hired to work as a substitute or as needed, and the wage history consists of on-call wages, he is not considered to be unemployed within the meaning of the law. 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. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed.

Claimant does not have other, non-educational wages in his base period that would make him monetarily eligible for benefits. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

DECISION:

The February 10, 2021, (reference 05) unemployment insurance decision is affirmed. The claimant is not considered unemployed under Iowa law. Regular unemployment insurance benefits funded by the state of Iowa are denied.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

April 6, 2021
Decision Dated and Mailed

lj/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**