

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAWRENCE J JANDA
Claimant

APPEAL NO. 21A-UI-05221-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLEGE COMMUNITY SCHOOL DISTRICT
Employer

OC: 04/19/20
Claimant: Respondent (2R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 1, 2021, reference 02, decision that allowed benefits effective November 15, 2020, provided the claimant met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work and available for work, but on a short-term layoff. After due notice was issued, a hearing was held on April 21, 2021. Claimant, Lawrence Janda, participated. Jeri Moritz represented the employer. Exhibits 1 through 4 were received into evidence at the time of the hearing. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. The administrative law judge took official notice that the claimant did not apply for and was not approved for Pandemic Unemployment Assistance (PUA).

The administrative law judge left the hearing record open for the limited purpose of allowing the employer to submit wages and work hour information regarding the relevant period. The employer provided the requested information on April 22, 2021 and it was received into evidence as Exhibit 5.

ISSUES:

Whether the claimant was able to work and available for work within the meaning of the law during the period of November 15, 2020 through January 2, 2021.

Whether the claimant was partially and/or temporarily unemployed during the period of November 15, 2020 through January 2, 2021.

Whether the employer's account may be charged for benefits for the period of November 15, 2020 through January 2, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant commenced his employment with College Community School District in 2012. From the time of hire until February 18, 2021, the claimant was employed by the District as a part-time "substitute cook." The claimant made himself available for work at all eight District schools. The claimant averaged 15 to 17 hours per week when school was in session. The claimant's

most recent wage in the “substitute cook” position was \$13.21. The employer would alert the claimant of available shifts through an online portal. The individual assignments could last from one to five days. There was not guarantee of work hours. The claim worked when he wanted to work and did not work when he did not want to work.

The claimant established an original claim for benefits that was effective April 19, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$195.00 and the maximum benefit amount for regular benefits at \$3,382.71. College Community School District is the sole base period employer. The claimant’s base period quarterly wages were as follows:

EMPLOYER	ACCT-LOC	2019/1	2019/2	2019/3	2019/4
COLLEGE COMMUNITY SCHOOL	102661	2976	4304	143	2723

The claimant’s 2020 quarterly wages were as follows:

EMPLOYER	ACCT-LOC	2020/1	2020/2	2020/3	2020/4
COLLEGE COMMUNITY SCHOOL	102661-000	2628	299	729	2660

The claimant exhausted regular benefits effective August 22, 2020. The claimant received PEUC benefits for the week ended August 29, 2020. The claimant then discontinued his claim.

The claimant established an additional claim for benefits that was effective November 8, 2020.

The present matter concerns the period beginning November 15, 2020. The claimant established the additional claim for benefits in response to the District temporarily discontinuing in-person classes effective November 15, 2020. The district remained closed through the benefit week that ended December 12, 2020. The District temporarily closed for in-person classes to slow community spread of COVID-19. The District had no work for the claimant during the four weeks between November 15, 2020 and December 12, 2020. The District did pay the claimant any wages for those four weeks.

The District reopened for in-person classes effective December 14, 2020. During the week that ended December 19, 2020, the claimant worked 10 hours, for which he earned \$132.10.

At the close of the school day on Tuesday, December 22, 2020, the District closed for winter break. During that week that ended December 26, 2020, the claimant worked 11.17 hours for which he earned \$147.55.

During the week that ended January 2, 2021, the District was closed for winter break.

The District reopened for classes on January 4, 2021. The claimant continued in his part-time, on-call cook position at that time.

The claimant discontinued his claim for benefits following the benefit week that ended January 2, 2021.

The claimant reported wages and received PEUC benefits as follows.

For the weeks that ended November 21, November 28, December 5 and December 12, 2020, the claimant reported zero wages and received \$195.00 in weekly PEUC benefits. These were the weeks when the District had no work for the claimant.

For the week that ended December 19, 2020, the claimant reported \$104.00 in wages and received \$139.00 in PEUC benefits. The claimant's actual wages for the week totaled \$132.10.

For the week that ended December 26, 2020, the claimant reported zero wages and received \$195.00 in PEUC benefits. The claimant's actual wages for the week totaled \$147.55.

For the week that ended January 2, 2021, the claimant reported zero wages. This was the winter break week. For this week, the claimant received \$195.00 in PEUC benefits and \$300.00 in FPUC benefits.

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)(1) and (3) provides:

Benefit 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.

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.

(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. 871-24.23(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 different from the contract for hire, such claimant cannot be considered partially unemployed.

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.

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 is not eligible for benefits for the period of November 15, 2020 through January 2, 2021. The claimant's base period wages are based solely on wages from the part-time on-call with the school district. During the base period and through January 2, 2021, the claimant only made himself available for the on-call employment with the District and did not have or seek other employment. For these reasons, the claimant cannot be deemed to have met the availability requirement and cannot be deemed to have been unemployed within the meaning of the law during the period of November 15, 2020 through January 2, 2021. Benefits are denied for the period of November 15, 2020 through January 2, 2021. The employer's account has not been charged and will not be charged for benefits paid to the claimant for the period of November 15, 2020 through January 2, 2021.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision regarding the PEUC benefits the claimant received for the period of November 15, 2020 through January 2, 2021 and for the FPUC benefits the claimant received for the week that ended January 2, 2021. The claimant should note the information the overpayment decisions will contain regarding the opportunity to request waiver of repayment of PEUC and FPUC benefits.

DECISION:

The February 1, 2021, reference 02, decision is reversed. The claimant was an on-call worker during the period of November 15, 2020 through January 2, 2021. The claimant's base period wages derive exclusively from on-call employment. As an on-call employee, the claimant did not meet the availability requirement during the period of November 15, 2020 through January 2, 2021 and cannot be deemed unemployed during that period. Benefits are denied effective November 15, 2020 and through January 2, 2021. The employer's account has not been charged and will not be charged for benefits for that period.

This matter is **remanded** to the Benefits Bureau for entry of an overpayment decision regarding the PEUC benefits the claimant received for the period of November 15, 2020 through January 2, 2021 and for the FPUC benefits the claimant received for the week that ended January 2, 2021. The claimant should note the information the overpayment decisions will contain regarding the opportunity to request waiver of repayment of PEUC and FPUC benefits.



James E. Timberland
Administrative Law Judge

August 3, 2021
Decision Dated and Mailed

jet/mh