

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JANELLE L COOK
Claimant

APPEAL NO. 11A-UI-04255-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVENPORT COMMUNITY SCH DIST
Employer

**OC: 02/13/11
Claimant: Appellant (4)**

Section 96.19-38-a & b – Total and Partial Unemployment
Section 96.7-2-a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 25, 2011, reference 02, which held claimant was not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on May 3, 2011. Claimant participated personally. Employer participated by Jenni Weipert.

ISSUE:

The issues are whether claimant is still employed at the same hours and wages and partially unemployed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was employed as full-time teacher for the employer during the 2009-2010 school year. She was not employed during the fall 2010. On January 21, 2011 she became a substitute teacher. She was last called to work from April 24-May 2, 2011 but she did not accept those assignments because she had obtained a full-time substitute teaching position for the remainder of the school year with another school district.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 Code § 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, 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.

An individual shall be deemed partially unemployed in any week in which 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 § 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.

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.

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.

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.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The employer is not entitled to relief of charges because the claimant is not receiving the same employment she received during the base period of her claim. Claimant was able and available for work from February 13, 2011 through April 23, 2011. Since April 24, 2011 the claimant has been employed full time and not able and available for work.

DECISION:

The March 25, 2011, reference 02, decision is modified. Benefits are allowed from February 13, 2011 through April 23, 2011, provided claimant is otherwise eligible. Benefits are withheld effective April 24, 2011.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/pjs