

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

REBECCA M SCHWARTZENBURG
Claimant

APPEAL NO. 21A-UI-13672-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLEGE COMMUNITY SCHOOL DISTRICT
Employer

OC: 05/17/20
Claimant: Appellant (5)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4-5 – Reasonable Assurance
Iowa Admin. Code r. 871-24.52(10) – Substitute Teacher
871 IA Admin. Code – 24.22(2)(I) – On Call Worker

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 27, 2021, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 13, 2021. Claimant participated. Employer participated by Jeri Moritz. Both parties agreed to waive time and notice and allow consideration of issues not included on the notice of hearing including issues surrounding claimant as an on call substitute teacher.

ISSUES:

Whether claimant quit for good cause attributable to employer?

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year?

Is claimant a substitute teacher?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 14, 2020 as an on call,

substitute teacher. Claimant started this work on January 29, 2020. There was no contract with employer guaranteeing any work. Claimant stopped working after February 14, 2020 to prepare for upcoming tests. Claimant stated she intended to work for employer in the spring semester, but could not as schools were shut down.

The State of Iowa shut down school on March 15, 2020. Claimant did not work for employer after that date. Claimant did not work for employer when the school year began for the 2020-2021 school year as start of school was delayed for one week as a result of the derecho. After this delay, claimant chose to take other work and did not work for employer although employer had ongoing work available.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The administrative law judge holds that claimant did not voluntarily quit her employment. The separation took place in the fall when claimant chose not to resume her on call position by accepting other employment out of state and did not alert employer of her ongoing desire to work as an on call substitute para educator.

For the reasons that follow, the administrative law judge concludes the claimant is not temporarily unemployed.

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 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. 871-24.23(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 96.4(5)b provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

Iowa Admin. Code r. 871-24.51(6) provides:

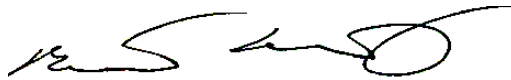
School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Because the claimant had no assurance through the school year of any amount of employment and was employed as an on call employee, claimant is not eligible to receive unemployment benefits for the time missed during the school year. As claimant was able to continue with her role as an on call substitute para educator had she chose to do so for the 2020-2021 school year, she is additionally not eligible to receive unemployment benefits over the summer period of time. Employer had no work available for claimant prior to claimant taking another job in the fall semester. Claimant is not entitled to unemployment benefits for this period.

DECISION:

The decision of the representative dated May 27, 2021, reference 02, is modified with no change in effect. Whereas the fact finder's decision denying benefits was based on a job separation, claimant is not entitled to benefits based on her position as an on call substitute teacher. As there is no promise of ongoing work, claimant is not eligible to receive benefits when work is not offered. Additionally, claimant is not eligible for benefits during the break between semesters, nor is she available for benefits once the school year was set to begin. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

August 18, 2021
Decision Dated and Mailed

bab/scn

Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.