

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JENNIFER L HAVEMANN
Claimant

BERGMAN ACADEMY
Employer

APPEAL 23A-UI-00841-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Jennifer L. Havemann, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) January 19, 2023 (reference 06) unemployment insurance (UI) decision. The decision denied Ms. Havemann REGULAR (state) UI benefits as of November 29, 2020 because IWD concluded that she was still employed in her job in the same way she had been before she filed her UI claim. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed a notice of hearing to the Ms. Havemann, the employer and IWD.

The undersigned administrative law judge held a hearing on February 23, 2023. The undersigned heard the following appeals together and created one hearing record: Appeals 23A-UI-00837-DZ-T through 23A-UI-00854-DZ-T, and 23A-UI-00856-DZ-T through 23A-UI-00859-DZ-T. Ms. Havemann participated personally. Nicole Merrill, attorney, represented Ms. Havemann. The employer participated through Chris Newton, director of finance and operations. IWD participated through Daniel Noonan, workforce program coordinator. Jeff Koncsol, attorney, represented IWD. The undersigned took official notice of the administrative record and admitted Claimant's Exhibits A-G and Department's Exhibits 1-4.

ISSUES:

Is Ms. Havemann able to and available for work as of November 29, 2020?
Is Ms. Havemann totally, partially, or temporarily unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Havemann began working for the employer, a base period employer, in 2009. She works as a full-time physical education teacher. The employer pays her a salary of about \$47,000.00 per year per a 12-month teaching contract. The teaching contract runs from July 1 of the first year to June 30 of the second year.

Ms. Havemann also teaches enrichment classes for one hour after school each school day, during Thanksgiving and Winter breaks, and summer camp during the summer break. The

employer offers school staff the option to teach the classes and/or camp and Ms. Havemann voluntarily participates. Neither the enrichment classes nor the summer camp are part of Ms. Havemann's teaching contract. The employer pays Ms. Havemann 80 percent of the participant fees for each class and/or camp. The employer does not guarantee Ms. Havemann hours or a certain amount of pay for the enrichment classes or summer camp. In calendar year 2018 and calendar year 2019, Ms. Havemann earned at least \$12,000.00 each year from teaching enrichment classes and/or summer camp. Ms. Havemann had signed a 12-month contract to work for the employer from July 1, 2019 through June 30, 2020 (the 2019-2020 school year).

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. In mid-March 2020, the employer closed for a few days and then began offering remote instruction. The employer offered remote instruction from mid-March 2020 through May 29, 2020, the end of the 2019-2020 school year. The employer also stopped offering enrichment classes in mid-March 2020 due to the COVID-19 pandemic but continued to pay Ms. Havemann her usual pay per her teaching contract from mid-March 2020 through June 30, 2020.

In early April 2020, the employer sent Ms. Havemann a 12-month contract to work for the employer from July 1, 2020 through June 30, 2021 (the 2020-2021 school year). Ms. Havemann signed the contract. But Ms. Havemann was concerned that she may not have a job in the 2020-2021 school year because student enrollment was down due to the pandemic and the contract provides that her employment could be terminated based on low student enrollment. So, Ms. Havemann applied for federal Pandemic Unemployment Assistance (PUA) benefits on April 29, 2020.

PUA benefits were federal UI benefits authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and extended by the Continued Assistance for Unemployed Workers Act of 2020 and the American Rescue Act of 2021 for any covered individual who was unemployed, partially unemployed, or unable to work due to the COVID-19 pandemic, and who was not eligible for REGULAR (state) UI benefits, Extended Benefits or Pandemic Emergency Unemployment Compensation (PEUC) benefits from January 27, 2020 through September 6, 2021. Governor Reynolds ended Iowa's participation in federal pandemic-related UI benefit programs, including the PUA program, effective June 12, 2021. So, the PUA eligibility period in Iowa was January 27, 2020 through June 12, 2021.

Ms. Havemann filed her initial REGULAR (state) UI claim the next day, Thursday, April 30, 2020. The effective date of Ms. Havemann's UI claim is Sunday, April 26, 2020, the Sunday of the week she filed her claim. Ms. Havemann filed her PUA claim and her REGULAR (state) UI claim because she was receiving less income due to the employer no longer offering enrichment classes. IWD set her weekly UI benefit amount as \$500.00. The employer paid Ms. Havemann her usual pay per her teaching contract from July 1, 2020 through June 30, 2021.

On April 30, 2020, Tammy Hoffman, a gaming representative with the Iowa Racing and Gaming Commission who was working as a subcontractor for IWD, sent Ms. Havemann an email asking Ms. Havemann to provide proper proof of her income for her PUA application. Ms. Havemann agreed to do so. That same day, Ms. Havemann told Ms. Hoffman via email that she had filed a REGULAR (state) UI claim because she thought she had to, and asked Ms. Hoffman if she had done the wrong thing. Ms. Havemann and Ms. Hoffman spoke on the phone that day. Ms. Havemann explained that she was filing her UI claim only because her enrichment pay was reduced. Ms. Hoffman told Ms. Havemann that she only needed to report her pay for enrichment classes when she filed her weekly UI claims.

On May 2, 2020, Ms. Havemann provided proof of her income for her PUA application to Ms. Hoffman. Ms. Havemann followed up with Ms. Hoffman on May 5, 2020. Ms. Hoffman replied that Ms. Havemann's income was verified, and her PUA application would be moved along. Over two years and nine months later, on February 21, 2023, IWD denied Ms. Havemann PUA benefits because IWD concluded that her employment was not covered under the CARES Act.

This appeal is limited to the time period November 29, 2020 through December 19, 2020. This is because IWD issued a different decision, the January 19, 2023 (reference 07) UI decision, addressing Ms. Havemann's eligibility for REGULAR (state) UI benefits as of December 20, 2020 in connection with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(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.

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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.¹ To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood."² "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."³

In this case, Ms. Havemann is still employed in her job as of November 29, 2020 in the same way as when she was hired. The employer hired Ms. Havemann as full-time teacher and offered her the option to teach enrichment classes and/or summer but did not guarantee her any hours or pay for the classes and/or camp. The employer continued to offer Ms. Havemann that same employment as of November 29, 2020. The fact that Ms. Havemann's pay temporarily decreased does not mean her employment changed. Since Ms. Havemann is still employed in her job as of November 29, 2020 in the same way she had been before she filed her UI claim, benefits are denied as of November 29, 2020.

¹ Iowa Admin. Code r. 871-24.22.

² *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

³ *Sierra* at 723.

DECISION:

The January 19, 2023 (reference 06) UI decision is AFFIRMED. Ms. Havemann is still employed in her job with this employer as of November 29, 2020 at same hours and wages as in her original contract of hire. Benefits are DENIED as of November 29, 2020.



Daniel Zeno
Administrative Law Judge

March 2, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.