

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL G STAUB
Claimant

APPEAL 20A-UI-10002-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS COMM SCHOOL DIST
Employer

**OC: 10/27/19
Claimant: Appellant (3R)**

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part-time, same hours and wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 6, 2020 (reference 10) unemployment insurance decision that found claimant was eligible for unemployment insurance benefits based upon non-educational wage credits in his base period. The parties were properly notified of the hearing. A telephone hearing was held on October 6, 2020. The claimant, Michael G. Staub, participated personally. The employer, Cedar Rapids Comm School Dist, did not participate. The hearing was consolidated with Appeal No. 20A-UI-09999-DB-T. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant have reasonable assurance?
Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on December 16, 2019. He is still employed to date. He works part-time as a bus attendant. He works a split shift; meaning his morning shift is 2.5 hours and his afternoon shift is 2.5 hours for 5 hours per day, Monday through Friday. The employer is a public school system. The claimant only works when the schools are in session. He does not work during customary school breaks or holidays. Claimant's job duties include assuring that the children on the bus are properly seated and that they exit at the correct locations.

The claimant had filed an original claim for unemployment insurance benefits with an effective date of October 27, 2019 when he separated from employment with McGrath Automotive

Group. His weekly benefit amount is \$481.00. He filed an additional claim for benefits effective March 15, 2020. His base period consisted of the following wages:

	2018/3	2018/4	2019/1	2019/2
Greenstate Credit Union	\$22,679	\$10,622	\$0.00	\$0.00
McGrath Automotive Group				\$1,350

Claimant worked as a full-time employee for both of his base period employers. The claimant accepted this part-time position with this employer because he was having difficulty finding other employment after his separation from McGrath Automotive Group, and this employer had benefits that were appealing to the claimant.

The school district was on spring break from March 16, 2020 through March 20, 2020 but did not return to classes after March 20, 2020 due to the COVID 19 Pandemic. However, the claimant was paid his regular part-time wages as a bus attendant, even though he was not performing services for the employer during the remainder of the school year from March 23, 2020 through June 1, 2020.

Claimant spoke to Jim Borgman, who was the head of drivers, about coming back to work the following 2020-2021 school year. Mr. Borgman told him that he would be able to come back to work when the school session started again for the next year and the claimant agreed to do so.

The school year was originally scheduled to begin on or about August 27, 2020; however, many of the buildings had suffered damage from the Derecho that occurred in August of 2020 and were unable to reopen fully until September 21, 2020. Claimant was paid his normal part-time wages as a bus attendant during the weeks that the school was unable to be in session because of the Derecho. Claimant has been working his normal hours since September 21, 2020.

Claimant's administrative records establish that he has received regular unemployment insurance benefits, Federal Pandemic Unemployment Compensation benefits, Pandemic Emergency Unemployment Compensation benefits and Lost Wages Assistance since filing his additional claim for benefits effective March 15, 2020.

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 96.19, subsection 38, paragraph "b", subparagraph (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)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 Code section 96.4(5) 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:

a. Benefits based on service in an instructional, research, or principal administrative capacity in 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 during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

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.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code. r. 871-24.52(6) provides:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

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.

In this case, the claimant was unemployed from May 31, 2020 through benefit week-ending August 29, 2020 due to a customary period between academic years or terms. The claimant had reasonable assurance of returning to work the following term as a bus attendant. However, his wages credits in his base period were from two other employers, and not this educational employer. Iowa Admin. Code r. 871-24.52(6). As such, benefits are allowed from May 31, 2020 through August 29, 2020 based upon wages from his non-educational employer's in his base period, and provided he is otherwise eligible.

Effective benefit week beginning August 30, 2020, while he was not physically working due to the Derecho; however, the employer paid him his normal part-time wages for each week until he started working his regular part-time hours on September 21, 2020. His wages were not reduced; rather he was paid his normal part-time wages during that period. As such, because he was not considered to be working a reduced workweek different from the contract for hire, he cannot be considered partially unemployed effective the benefit week beginning August 30, 2020. See Iowa Admin. Code r. 871-24.23(26). Benefits are denied effective August 30, 2020

and continuing due to the claimant being still employed in his part-time job at the same hours and wages as contemplated in his original contract of hire.

DECISION:

The August 6, 2020 (reference 10) decision is modified in favor of the respondent. Claimant had reasonable assurance between academic years or terms from May 31, 2020 through August 29, 2020 but had other non-educational wage credits in his base period. Benefits are allowed from May 31, 2020 through August 29, 2020, based on his other non-educational base period wages and provided the claimant is otherwise eligible. This employer shall not be charged for benefits paid from May 31, 2020 through August 29, 2020.

Claimant was still employed at the same hours and same wages and is therefore not partially unemployed effective August 30, 2020 and continuing while he is working the same hours and earning the same wages as in his original contract of hire. Regular unemployment insurance benefits funded by the State of Iowa are denied effective August 30, 2020.

REMAND:

The issues of whether the claimant has been overpaid regular unemployment insurance benefits, Federal Pandemic Unemployment Compensation benefits, Pandemic Emergency Unemployment Compensation benefits and Lost Wages Assistance since filing his additional claim for benefits effective March 15, 2020 is remanded to the Benefits Bureau for an initial investigation and determination.

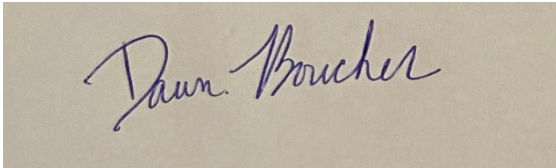
This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA

benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

October 8, 2020
Decision Dated and Mailed

db/scn