

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY A TEDESCO
Claimant

APPEAL 21A-UI-14178-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHNSTON COMMUNITY SCHOOL DIST
Employer

**OC: 03/14/21
Claimant: Appellant (1)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal of the June 7, 2021 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective March 14, 2021 as her unemployment occurred between academic years or terms from her educational employer and she had reasonable assurance of employment between academic years or terms. The parties were properly notified of the hearing. A telephone hearing was held on August 16, 2021. Claimant participated personally. Employer Johnston Community School District registered a witness for the hearing, but the witness was unavailable at when the administrative law judge called for the hearing and did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed effective March 14, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a substitute teacher. This employer is an educational institution. Claimant works on-call as needed while school is in session. She does not work during regular school breaks or between academic years or terms. Claimant was given reasonable assurance of continued employment for the 2020-21 school year.

Claimant's wages in her base period consist solely of educational employers. She does not have non-educational wages in her base period

Claimant last worked for employer in February 2020. In March 2020, Governor Reynolds cancelled in-person classes for what ended up being the remainder of the school year because of the COVID-19 pandemic.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be unemployed for purposes of Iowa employment security law.

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. 871-24.22(2)i(3) 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....

i. On-call workers.

(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. 871-24.52(10)(c) states:

Substitute teachers.

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)“(3).”

Because claimant was hired to work as a substitute or as needed, and the wage history consists of on-call wages, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed.

Claimant does not have other, non-educational wages in his base period that would make her monetarily eligible for benefits. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

DECISION:

The June 7, 2021 (reference 03) decision is affirmed. Claimant is not considered unemployed under Iowa law. Regular unemployment insurance benefits funded by the state of Iowa are denied.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 20, 2021
Decision Dated and Mailed

sa/ol