

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON D POWELL
Claimant

APPEAL NO. 12A-UI-06869-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES AREA
COMMUNITY COLLEGE**
Employer

OC: 05/06/12
Claimant: Appellant (2-R)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 1, 2012, reference 02, that concluded he was not available for work during the weeks between May 6 and 19, 2012. A telephone hearing was held on July 5, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Kay Ruggiero participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work between May 6 and 19, 2012?

FINDINGS OF FACT:

The claimant is an adjunct instructor for the employer, Des Moines Area Community College (DMACC). He has worked in that capacity since May 2007. His position includes providing guitar lessons to DMACC students for college music credit and directing DMACC choirs. The claimant is paid a set rate for each lesson provided to students and a salary based on a three-credit course for each choir he directs.

He is employed on a semester-basis for the Fall, Spring, and Summer semester. During the summer semester the claimant is only employed as a guitar instructor and his pay is reduced from what he receives during the school year.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 6, 2012. From May 3 to 21, 2012, the claimant was off work due to the break between the Spring and Summer school terms. The employer protested the claimant receiving benefits during this period under the Iowa Code §§ 96.4-5-a and 96.4-5-c, which deny benefits to school employees between school terms and customary vacation periods. The claimant was able to work and was available to work from May 6 to 19, 2012. He was scheduled to and did return to work for the Summer school term. The Agency exempted him from making a work search because he was considered to be partially unemployed.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3 from May 6 to 19, 2012. The Agency made its decision based on an administrative rule 871 IAC 24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) The claimant's availability for other work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employer.

This rule has no application to a situation like the present case where the claimant has period of time where the employer has no work for him and has a definite date to return to work. The evidence establishes the claimant was able to and available for work during the time between school terms.

The Agency has never made a decision regarding the issue raised in the employer's protest, which is whether the claimant should receive benefits during the period between the Spring and Summer school terms under the Iowa Code 96.4-5-a and 96.4-5-c, which deny benefits to school employees between school terms and customary vacation periods. This was not listed as an issue on the hearing notice, and the claimant did not wish to proceed on the issue. The issue of whether the claimant should be denied benefits from May 6 to 19, 2012, due to Iowa Code 96.4-5-a and 96.4-5-c is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 1, 2012, reference 02, is reversed. The claimant was available for work from May 6 to 19, 2012, and eligible for benefits during that period, provided he is otherwise qualified. The issue of whether the claimant should be denied benefits from May 6 to 19, 2012, due to Iowa Code §§ 96.4-5-a and 96.4-5-c is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw