

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DWIGHT A JACKSON
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 21A-UI-12154-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

STATEMENT OF THE CASE:

On May 3, 2021, the employer, Des Moines Independent Community School District, filed an appeal from the April 27, 2021 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was able to work and available for work effective March 14, 2021. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Friday, July 23, 2021. The claimant, Dwight A. Jackson, participated. The employer, Des Moines Independent Community School District, participated through Rhonda Wagoner, Benefits Specialist; and Heather Jacobus, Administrative Assistant. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to work and available for work effective March 14, 2021?
Is the claimant a substitute teacher?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with the Des Moines Independent Community School District as an on-call substitute teacher on November 14, 2018. Claimant remains listed as an active substitute teacher with the employer. However, claimant's last substitute teaching assignment was March 3, 2020.

As a substitute teacher, claimant sets his own schedule and chooses when he wants to work. Claimant has the ability to select specific assignments he wants to take, and he can decline work without penalty. Claimant is currently signed up to just teach at high schools for the employer.

Claimant has wages in his base period from four employers: this employer; Des Moines Area Community College (account 103238); Kelly Services USA, LLC (account 556195); and Premier Staffing, Inc. (account 505396). As discussed above, claimant is a substitute teacher for this

employer. For the other three employers, claimant teaches parenting classes and life skills classes. These appear to be done on an ad hoc basis.

In November 2020, claimant underwent major surgery due to cancer. Claimant was just released to return to work the week of July 11 through July 17. Effective July 18, claimant can perform his work teaching and facilitating classes. He is not able to do physical labor, but this has not been required of him in the past. He is not able to work full time, but he did not work full-time hours prior to surgery.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work from March 14, 2021, through July 17, 2021. Further, the administrative law judge finds claimant was a substitute teacher for this employer, and wage credits from this employment should be removed from his base period.

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", 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 Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Here, claimant testified that he was under a doctor's care for months after undergoing major surgery to remove cancer from his body. During this period of healing, claimant was not physically able to work. Claimant obtained a doctor's release the week of July 11. Therefore, the administrative law judge finds claimant was able to work and available for work effective July 18, 2021.

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) "i"(3).

Here, claimant has a combination of part-time employment wages and substitute teaching wages in his base period. The administrative law judge finds that the wages from claimant's on-call substitute teaching work with the Des Moines Independent Community School District should be removed from his base period.

DECISION:

The April 27, 2021 (reference 01) unemployment insurance decision is modified in favor of the employer/appellant. Claimant is not available for work from March 14, 2021, through July 17, 2021. Claimant is available for work effective July 18, 2021. Benefits are allowed from that date forward, provided he is otherwise eligible.

Wages from claimant's on-call substitute teaching work with the Des Moines Independent Community School District should be removed from his base period.

A handwritten signature in blue ink, appearing to read "Elizabeth Johnson", is positioned above a horizontal line.

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

August 02, 2021
Decision Dated and Mailed

lj/ol