

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**EMILIO BRUNA**  
Claimant

**APPEAL NO. 21A-UI-24807-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KIRKWOOD COMMUNITY COLLEGE-AREA  
1**  
Employer

**OC: 09/19/21  
Claimant: Appellant (1)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
871 IA Admin. Code – 24.22(2)(I) – On Call Worker

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 27, 2021, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 7, 2022. Claimant participated personally. Employer participated by Sheri Hlavacek. Claimant's Exhibits A-C were admitted into evidence

**ISSUES:**

Whether claimant is still employed at the same hours and wages?  
Whether claimant is eligible to receive partial benefits?  
Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The claimant has previously worked for Kirkwood Community College, a base period employer, part time as an adjunct professor on an as-needed basis under the same terms and conditions as contemplated in the original contract of hire. Claimant's agreement with the college is that he will conduct one or two Zoom economics classes a semester when there is a need for a professor and there are sufficient students willing to take the classes on video rather than in person.

Procedurally, claimant is contacted months in advance of a possible opening by the dean of the department. The dean will indicate a potential need in an upcoming semester. From that point, it still must be determined whether sufficient students are willing to take the class in an online format such that it is feasible to start a new class.

Claimant had earnings from employer in the fourth quarter of 2020 and the first and second quarters of 2021. Claimant was not asked to teach this last fall semester, but will probably be teaching the spring 2022 semester.

Employer stated that the claimant is not guaranteed work at any time. Claimant has no contract and gets no benefits. Claimant has no assurances at the end of one year that he'll be asked to work the next until he receives an email from the dean requesting services – if enough students enroll.

The 2020-2021 school year was the first year that claimant worked for employer. There is no history between the parties as to when contact is made for work the following semester, although employer's representative stated that the initial contact is usually done months before the next semester arrives.

The claimant limits his teaching to only those times when a Zoom class will be available as claimant lives out-of-state and has given no indication that he would move to Iowa from Florida to teach classes.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not partially or temporarily unemployed.

Iowa Code section 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 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 Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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.

Iowa Code section 96.4(5)a 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.

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.

The claimant's period of time when he is not working for employer is not a temporary unemployment, as claimant goes without work for months, not four or fewer weeks. It is not a partial unemployment as claimant is fully unemployed during the period when he filed for benefits. Claimant had no 'reasonable assurance' that he would ever be offered employment again, as his offers are wholly dependent upon employer's changing needs.

Claimant limits his work for employer to only those period when employer can use him as a Zoom teacher. As claimant limits his availability to work in this manner, he is not considered able and available for work. Benefits are denied.

**DECISION:**

The October 27, 2021, reference 01, decision is affirmed. The claimant is able and available for work – except to teach Zoom classes, and benefits are denied.



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Blair A. Bennett  
Administrative Law Judge

January 31, 2022  
Decision Dated and Mailed

bab/mh