

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARLA LILLY
Claimant

APPEAL 20A-UI-15822-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 08/16/20
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability
Iowa Code § 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

On November 25, 2020, Des Moines Independent Community School District (employer) filed an appeal from the November 18, 2020, reference 01, unemployment insurance decision that allowed benefits effective August 16, 2020, based upon the determination Karla Lilly (claimant) was temporarily laid off and considered able to and available for work. After due notice was issued, a telephone hearing was held on January 28, 2021. The claimant did not respond to the hearing notice and did not participate. The employer participated through Rhonda Wagoner, Benefits Specialist. Joy Linquist was sworn in as an employer witness, but she did not testify. The employer's Exhibits 1 through 5 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to work, available for work, and actively and earnestly seeking work effective August 16, 2020?
Has the claimant been overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer hired the claimant in March 2020 to begin working on August 17, as a Campus Monitor. The employer delayed school openings and the claimant did not begin working until August 27; however, she has received \$768.54 each week in gross wages beginning the week of August 16.

The claimant filed her claim for unemployment insurance benefits effective August 16 and her weekly benefit amount is \$452.00. She filed weekly claims for four weeks through the week

ending September 12. The claimant reported wages earned in excess of \$467.00 each week. The claimant has not received any benefits to date due to ineligibility with another employer.

REASONING AND CONCLUSIONS OF LAW:

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

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:

Definitions.

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 Admin. Code r. 871-24.22(2) provides, in relevant part:

Benefit 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(20) Where availability for 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 employers.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has received wages for each week she has claimed benefits. She is not totally or temporarily unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.* The claimant earned more than \$467 each week she filed for benefits. Therefore, she cannot be partially unemployed.

As the claimant is not unemployed under Iowa law, whether she is able to work and available to accept work is moot. Additionally, the issue of overpayment is moot because the claimant has not received any benefits to date.

DECISION:

The November 18, 2020, reference 01, unemployment insurance decision is reversed. The claimant is not unemployed as defined by Iowa law. Benefits are denied.

A handwritten signature in dark ink, reading "Stephanie R Callahan" with a long horizontal flourish extending to the right.

Stephanie R. Callahan
Administrative Law Judge

February 12, 2021
Decision Dated and Mailed

src/kmj