

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**RAEJEAN FAIRBANKS**

Claimant

**APPEAL NO. 20A-UI-07300-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS COMM SCHOOL DIST**

Employer

**OC: 03/15/20**

**Claimant: Appellant (4/R)**

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.19(38) – Temporary and/or Partial Unemployment

**STATEMENT OF THE CASE:**

Raejean Fairbanks filed a timely appeal from the June 25, 2020, reference 01, decision that denied benefits effective March 13, 2020, based on the deputy's conclusion that Ms. Fairbanks could not be considered partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on August 6, 2020. Ms. Fairbanks participated. The employer did not provide a telephone number for the hearing and submitted a letter in lieu of participating in the appeal hearing, which exhibit was received into evidence as Exhibit 1. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether Ms. Fairbanks was able to work and available work during the three-week period of March 15, 2020 through April 4, 2020 and also in connection with the additional claim for benefits that was effective June 14, 2020.

Whether Ms. Fairbanks was temporarily and/or partially unemployed during the three-week period of March 15, 2020 through April 4, 2020 and also in connection with the additional claim for benefits that was effective June 14, 2020.

Whether Ms. Fairbanks is disqualified for benefits based on the between-academic-terms disqualification provision set forth at Iowa Code section 96.4(5).

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Raejean Fairbanks established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set her weekly benefit amount at \$102.00. The applicable base period in connection with the claim consists of the fourth quarter of 2018 and the first, second, and through quarters of 2019. Royce Tyler, L.L.C., doing business as Ced-Rel Supper Club, is the sole base period employer in connection with the claim. Ms. Fairbanks last performed work for Ced-Rel on March 13, 2020. That employer then temporarily ceased operations due to

COVID-19, pursuant to Governor Reynolds' State Public Health Emergency Declaration in which the Governor directed restaurants to cease indoor dining. Due to COVID-19, Ced-Rel had no further work for Ms. Fairbanks until August 5, 2020.

In October 2019, Ms. Fairbanks commenced employment with the Cedar Rapids Community School District as a part-time food service worker. Before the COVID-19 pandemic, Ms. Fairbanks' work hours were 9:30 a.m. to 1:30 p.m., Monday through Friday, when school was in session. Her hourly wage was \$12.14. Ms. Fairbanks usually worked 20 hours per week, which translated to \$242.80 in weekly wages. Ms. Fairbanks last performed work for the District on March 13, 2020. The following week, March 15-21, 2020, was spring break. During that week, the District discontinued in-class teaching due to the COVID-19 pandemic. The shutdown continued through the June 1, 2020 scheduled last day of school.

Ms. Fairbanks established her original claim for unemployment insurance benefits in response to the sudden loss of these to sources of income. Ms. Fairbanks remained available for work with each employer. Ms. Fairbanks filed weekly claims for the weeks that ended March 21, March 28 and April 4, 2020. Ms. Fairbanks received \$102.00 in regular weekly benefits for the weeks that ended March 21 and March 28. Ms. Fairbanks thereafter learned that the District was going to continue to pay her regular wages for the period after spring break and through the end of the school year. When Ms. Fairbanks made her claim for the week that ended April 4, 2020, she reported \$243.00 in vacation pay that was actually District wages. Ms. Fairbanks thereafter discontinued her claim for benefits. The District did not pay wages for spring break week, March 15-21, 2020, but paid regular wages for the week of March 22-28, 2020 through the benefit week that ended June 5, 2020. The wages paid for the weeks between March 22, 2020 and June 6, 2020 were consistently more than double Ms. Fairbanks' \$102.00 weekly benefit amount.

Ms. Fairbanks established an additional claim for benefits that was effective June 14, 2020. On June 21, 2020, Ms. Fairbanks made a timely claim for the week that ended June 20, 2020. On June 24, 2020, Ms. Fairbanks made a claim for the week that ended June 13, 2020, which claim IWD disallowed because it predated the effective reopen date of the claim. For the week that ended June 20, 2020, IWD paid Ms. Fairbanks \$102.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC). When Ms. Fairbanks received the June 25, 2020, reference 01, decision that denied benefits effective March 13, 2020, she ceased making weekly claims.

Prior to August 6, 2020, Ms. Fairbanks had no assurance from the Cedar Rapids Community School District that the District intended to return to her the employment at the start of the 2020-2021 school year. On August 6, 2020, Ms. Fairbanks received a training packet in the mail and received a call from her supervisor about the need to participate in upcoming training in preparation for the 2020-2021 academic year. As of August 6, 2020, it became evident to Ms. Fairbanks that the District intended to continue her employment into the new academic year.

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

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 Admin. Code r. 871-24.22(2) 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. 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 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.

The evidence in the record establishes that Ms. Fairbanks has at all relevant times been physically and mentally able to work and available for work.

During the week that ended March 21, 2020, Ms. Fairbanks was temporarily unemployed. The District did not have work for Ms. Fairbanks that week because it was the week of spring break and the students were away. The District did not pay wages to Ms. Fairbanks for that week. Ms. Fairbanks is eligible for benefits for the week that ended March 21, 2020, provided she met all other eligibility requirements.

Ms. Fairbanks cannot be deemed unemployed from the District during the weeks that ended March 28 and April 1, 2020, because the District paid her full wages for each of those weeks and the wages exceeded her weekly benefit amount by more than \$15.00. Ms. Fairbanks is not eligible for benefits for the weeks ending March 28 and April 4, 2020.

Ms. Fairbanks was able to work and available for work at the time she established the additional claim for benefits that was effective June 14, 2020. She is eligible for benefits for the period beginning June 14, 2020, provided she meets all other eligibility requirements.

The District is not a base period employer and is not subject to charge for benefits paid to Ms. Fairbanks during the current claim year. See Iowa Code section 96.7(2) (regarding base period employer liability).

Because the District is not a base period employer, the between-academic-terms disqualification set forth at Iowa Code section 96.4(5) has no bearing on Ms. Fairbanks' eligibility for benefits for the period between March 15, 2020 and June 20, 2020.

#### **DECISION:**

The June 25, 2020, reference 01, decision is modified as follows. The claimant was able to work and available for work during the three-week period of March 15, 2020 through April 4, 2020 and during the additional claim week that ended June 20, 2020. The claimant was temporarily laid off during the week that ended March 21, 2020 and is eligible for benefits for that week, provided she is otherwise eligible. Because the claimant received her regular District wages during the weeks that ended March 28, 2020 and April 4, 2020, and because those wages exceeded her weekly benefit amount by more than \$15.00, the claimant cannot be deemed partially or temporarily unemployed from the District during those weeks and is not eligible for benefits for those weeks. During the week that ended June 20, 2020, the claimant was laid off and was eligible for benefits, provided she met all other eligibility requirement. The District is not a base period employer and is not subject to charge for benefits paid to the claimant during the current claim year. Because the District is not a base period employer, the between academic terms disqualification provision set forth at Iowa Code section 96.4(5) has no effect on the claimant's eligibility for benefits for the period between March 15, 2020 and June 20, 2020.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$102.00 in benefits the claimant received for the week that ended March 28, 2020.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

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James E. Timberland  
Administrative Law Judge

August 20, 2020  
Decision Dated and Mailed

jet/scn