

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOROTHY M KENDALL
Claimant

APPEAL NO. 12A-UI-03869-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EAST MARSHALL COMM SCHOOL
DISTRICT**
Employer

OC: 08/07/11
Claimant: Respondent (2-R)

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Still Employed at the Same Hours and Wages

STATEMENT OF THE CASE:

East Marshall Community School District filed a timely appeal from a representative's decision dated April 4, 2012, reference 05, which held claimant eligible to receive unemployment insurance benefits effective February 19, 2012. After due notice, a telephone hearing was held on May 2, 2012. Claimant participated. The employer participated by Ms. Janice Anderson, Administrative Assistant.

ISSUE:

The issue is whether the claimant meets the availability requirements to receive unemployment insurance benefits.

FINDINGS OF FACT:

Dorothy Kendall opened a claim for unemployment insurance benefits with an effective date of August 7, 2011. At that time the claimant's only employer in the base period was Jamie's Real Estate, LLC. Subsequently on August 28, 2011, Ms. Kendall began to work as a substitute para educator for the East Marshall Community School District. It was determined that the claimant was eligible to receive partial unemployment insurance benefits based upon her previous employment during the weeks that she did have sufficient earnings from the school district. The school district was not charged for the benefits paid to Ms. Kendall.

On October 10, 2011, Ms. Kendall accepted a contract for full-time employment as a para educator for the East Marshall Community School District. At the time of hearing, the claimant continues to work full time for the school district. (A school employee is not eligible to receive unemployment insurance benefits between academic terms or years, providing that reasonable assurance of continuing employment after the break between terms has been given.)

It is the school district's position that Ms. Kendall has been employed full time by the school district since October 10, 2011 and that the school district should not be charged for any benefits paid to Ms. Kendall.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant is able and available for work and eligible to receive unemployment insurance benefits.

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".

The evidence in the record establishes that Ms. Kendall was able and available for work and eligible to receive partial unemployment insurance benefits based upon her previous employment with Jamie's Real Estate, LLC beginning on August 7, 2011 and continuing until October 10, 2011 when her part-time substitute position was changed to a full-time para educator position by contract with the East Marshall Community School District.

From the period of October 10, 2011 through the time of hearing, the evidence establishes that Ms. Kendall is not available for work in the general labor market as she has accepted full-time employment with the school district devoting the majority of each week to her full-time employment with the school district. The claimant, therefore, does not meet the availability requirements for unemployment benefits as she is currently employed full time.

The decision that the claimant is eligible to receive unemployment insurance benefits beginning February 19, 2012 as the claimant is employed part time working on call is incorrect as the evidence in the record establishes that as of February 19, 2012, the claimant was employed full time by the East Marshall Community School District and does not meet the availability requirements of the law as of that date.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated April 4, 2012, reference 05, is reversed. The decision holding the claimant eligible to receive unemployment insurance benefits beginning February 19, 2012 finding the claimant is available for work is reversed. Claimant is not available for work. Claimant is employed full time at the East Marshall Community School District and is not available for other employment. The issue of whether the claimant must repay unemployment benefits is remanded to UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs