

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DIANE L RADKE

Claimant

APPEAL NO: 20A-UI-04762-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON COMMUNITY SCHOOL DISTRICT

Employer

OC: 03/22/20

Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 22, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 16, 2020. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time middle school accompanist for Clinton Community School District in August 2019 and worked in that capacity until March 22, 2020, when the school district shut down and then reopened virtually due to COVID 19. She offered her services to the choir director but did not receive a response. She has a contract for the 2020-2021 school year. She stopped filing for benefits when the school year ended June 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not still employed at the same hours and wages as contemplated in the original contract of hire from March 22 through June 2, 2020.

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. 871-24.23(26) provides:

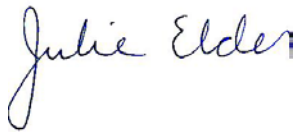
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

The claimant was hired as a part-time middle school choir accompanist. There has been no separation from her part-time employment but the claimant was not working for this employer at the same hours and wages as contemplated in the original contract of hire between March 22 and June 2, 2020. The claimant was partially unemployed. Therefore, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 22, 2020, reference 01, decision is reversed. The claimant is partially unemployed and is not still employed at the same hours and wages as in her original contract of hire for the 2019-2020 school year. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

je/scn