

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TARA L HANKINS**

Claimant

**APPEAL 20A-UI-08744-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**

Employer

**OC: 03/15/20**

**Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Able to and Available for Work

Iowa Code § 96.19(38) – Total, Partial and Temporary Unemployment

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 15, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective March 15, 2020 through May 30, 2020 because she was working too many hours to be considered unemployed. The parties were properly notified of the hearing. A telephone hearing was held on September 8, 2020. The claimant, Tara L. Hankins, participated personally. The employer, Des Moines Ind Community Sch Dist, participated through representative Rhonda Wagoner and witnesses Lashone Mosely and Joy Linquist. This hearing was consolidated with Appeal No. 20A-UI-08745-DB-T. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant able to and available for work from March 15, 2020 through May 30, 2020?

Was the claimant totally, partially or temporarily unemployed from March 15, 2020 through May 30, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time as an academic year bus associate. Her job duties include assisting children with riding the school bus to and from school. Her normal working hours are during the school year from Monday through Friday, while school is in session. She typically works eight hours per day while school is in session. She does not work and does not get paid for times when the school is in break. She earns \$16.66 per hour.

Claimant filed an original claim for unemployment insurance benefits effective March 15, 2020. Her weekly benefit amount is \$481.00. Effective March 26, 2020 through May 29, 2020, the schools in the school district were closed due to the COVID 19 pandemic. Claimant did not work but continued to receive her normal customary wages from March 26, 2020 through May 29, 2020. She was not paid March 15, 2020 through March 26, 2020 because this was

during a normal customary break (spring break) and her contract provided that she would not be paid during school breaks.

In the past, the claimant also worked as a bus associate in the summer months. This involved her bidding on available routes. She would normally work three days per week from 4-6 hours per day during the summer months. Routes during the summer would fluctuate based upon business needs. Claimant never had a set schedule during the summer as her hours would vary. For the summer of 2020, no bus routes were available for her to bid on because the schools remained closed due to the COVID 19 pandemic. When the school year ended in May of 2020, the claimant knew that she would be asked back to work for the next academic school year but was unsure of the exact date that they would start back.

Effective September 3, 2020, claimant has gone back to work for the 2020-2021 academic school year as a full-time bus associate. She is currently working six hours per day instead of eight hours per day due to a decrease in business needs as some schools have begun teaching students virtually and only the students who need to be in the school buildings are being transported.

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

For the reasons that follow, the administrative law judge concludes the claimant was not totally or partially unemployed from March 15, 2020 through May 30, 2020. Benefits are denied for March 15, 2020 through May 30, 2020.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(23) provides:

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

(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.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

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 Code section 96.4(5) 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.

b. Benefits based on service in any other capacity for 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 terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational

institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Admin. Code r. 871-24.52(9) provides in part:

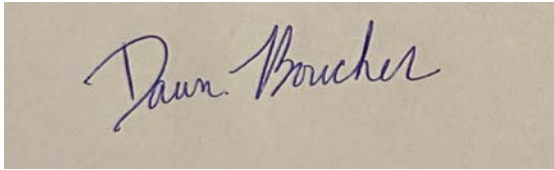
(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

From March 15, 2020 through March 25, 2020, claimant is not eligible for benefits because she was on a customary vacation period (spring break) and had a contract that detailed she would not be paid while on school breaks. From March 26, 2020 through May 30, 2020, while the claimant was not physically working because the schools were closed, she did receive her full normal pay for the remainder of the school year. As such, because she was receiving her normal full pay during that time period, she is not considered to be totally, partially or temporarily unemployed. Benefits are denied from March 15, 2020 through May 30, 2020.

#### **DECISION:**

The July 15, 2020 (reference 01) unemployment insurance decision is modified with no change in effect. The claimant was not temporarily, totally or partially unemployed from March 15, 2020 through May 30, 2020. Benefits are denied from March 15, 2020 through May 30, 2020.

*This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.*



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Dawn Boucher  
Administrative Law Judge

September 9, 2020  
Decision Dated and Mailed

db/scn

**Note to Claimant**

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.