

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERRY PATTERSON
Claimant

AMES COMMUNITY SCHOOL DIST
Employer

APPEAL 21A-UI-02987-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/15/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 6, 2021 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 15, 2021, at 8:05 a.m. Claimant participated. Employer participated through Kristin Johnson, Director of Human Resources. Employer's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed with Ames Community School District since September 4, 2018. Claimant works as a substitute teacher. Claimant was on the substitute teaching list for the 2019/2020 school year. Claimant is also on the substitute teaching list for the 2020/2021 school year.

Claimant filed an initial claim for benefits effective March 15, 2020 when schools closed due to Covid-19. Claimant's base period includes the fourth quarter of 2018 through the third quarter of 2019. During the base period, claimant also earned wages as a substitute teacher for Gilbert Community School District and as an on-line instructor for Iowa Central Community College. Claimant's wages with Iowa Central Community College were not earned performing on-call work.

Claimant was uncertain whether schools would reopen due to Covid-19. As a result, claimant searched for other employment since filing his initial claim for benefits. Claimant was out of town from January 4, 2021 until January 8, 2021. Claimant had no other barriers to employment since filing his initial claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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)i(1) 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....

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

Iowa Admin. Code r. 871-24.52(10) provides:

Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2)"i"(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)"i"(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)"i"(3) if they are:

(1) Able and available for work.

- (2) Making an earnest and active search for work each week.
- (3) Placing no restrictions on their employability.
- (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

Iowa Admin. Code r. 871-24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

While claimant is an on-call worker for employer, claimant was able to and available for work, made an earnest and active work search, placed no restrictions on his employability and had wages other than on-call wages with an educational institution during his base period. Therefore, claimant is able to and available for work even though he is an on-call worker for employer.

Claimant was out of town for personal reasons from January 4, 2021 through January 8, 2021, which is the major portion of the workweek. Claimant had no other barriers to employment. Therefore, claimant was able to and available for work since filing his claim effective March 15, 2020, except for the benefit week ending January 9, 2021.

DECISION:

The January 6, 2021 (reference 03) unemployment insurance decision is modified in favor of appellatant. Claimant is able to and available for work except for the benefit week ending January 9, 2021. Benefits are allowed for all weeks except the week ending January 9, 2021, provided claimant is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge

March 29, 2021
Decision Dated and Mailed

acw/ol