

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**LINDA D MATHEWS**  
Claimant

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**APPEAL 21A-UI-22546-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment  
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 6, 2021, (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 3, 2021. Claimant participated personally. Employer participated by Rhonda Wagoner, Benefits Specialist, and Megan Porter, Executive Assistant for Substitute Teachers. Employer's Exhibits 1-4 were admitted into evidence. The administrative law judge took official notice of the administrative record.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed as a substitute teacher for the Des Moines Community School District during the 2020 – 2021, school year. Claimant was hired to work on-call or as needed when work was available.

On March 15, 2020 there was no work available because the school was on spring break. On March 26, 2020 the school closed due to the pandemic. The school opened again on September 8, 2020. As a substitute teacher claimant would not have worked during the summer, and would not have earned any wages.

The school required all employees to wear face masks as part of the school's covid-19 mitigation initiatives beginning in September, 2020. After the school re-opened in September, 2020 claimant stopped accepting substitute teaching assignments because she was uncomfortable wearing a face mask. Claimant has chosen not to work for the school since that date. Claimant felt that wearing a mask, and trying to speak to students was stressful, and bad

for her health. Claimant did not seek any guidance from a physician prior to making her decision not work, and she did not provide a doctor's note to the employer.

Employer was not made aware of any medical conditions or restrictions which would have prevented the claimant from wearing a face mask while at work. Employer does allow employees, who present a valid doctor's note to work without wearing a face mask if a physician indicates that wearing a mask would be detrimental to the employee's health.

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

For the reasons that follow, the administrative law judge concludes the claimant is able and available for benefits beginning on March 29, 2020 through May 30, 2020 while the school was closed due to the pandemic. Claimant is not eligible for benefits beginning on May 31, 2020 because she was not able and available for work after that date.

Iowa Code section 96.4(5)c 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:

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.

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.

Iowa Admin. Code r. 871-24.22(2)i(2) provides:

**(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.

*i. On-call workers.*

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

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

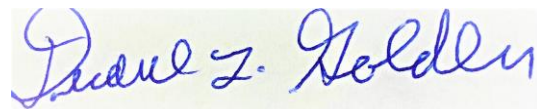
Claimant was able and available for work beginning on March 29, 2020 after the school closed and she was not offered any work from the employer. She is not eligible for benefits beginning on May 31, 2020 during the summer break. When an individual is hired to work “on-call” the implied agreement is that they will only work when work is available and that work will not be regularly available. Claimant knew that work was not available during the summer, and she would not be paid during those months. Claimant was hired to work only on-call or as needed and she remains on the substitute teacher list, she is not considered to be unemployed within

the meaning of the law during those dates. Benefits are also denied beginning on September 8, 2020 when claimant stopped accepting work assignments from the employer because she did not want to wear a face mask at work. Claimant was not advised by a physician that wearing a mask was detrimental to her health, she chose to make that assumption on her own. At that point claimant removed herself from the job market without medical justification.

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final, or if you are not eligible for PUA, you may have an overpayment of benefits.

**DECISION:**

The October 6, 2021, (reference 02) unemployment insurance decision is modified in favor of the claimant. The claimant is able and available for benefits beginning on March 29, 2020 through May 30, 2020 while the school was closed due to the pandemic. Claimant is not eligible for benefits beginning on May 31, 2020 because she is not able and available for work after that date.



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Duane L. Golden  
Administrative Law Judge

January 13, 2022  
Decision Dated and Mailed

dlg/mh