

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PATRICIA PIZIALI

Claimant

DES MOINES IND COMMUNITY SCH DIST

Employer

APPEAL NO. 21A-UI-13928-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Patricia Piziali, filed a timely appeal from the June 2, 2021, reference 08, decision that denied regular benefits effective October 4, 2020, based on the deputy's conclusion that, according to the claimant's physician, the claimant was not able to perform work and therefore did not meet the availability requirements. After due notice was issued, a hearing was held on August 17, 2021. Claimant participated. Rhonda Wagoner represented the employer and presented additional testimony through Heather Jacobus. There were six appeal numbers set for a consolidated hearing: 21A-UI-13922-JTT, 21A-UI-13924-JTT, 21A-UI-13925-JTT, 21A-UI-13927-JTT, 21A-UI-13928-JTT and 21A-UI-19329-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, WAGE-A, the October 27, 2020 and May 26, 2021 PUA applications, the November 30, 2020 PUA Claim Detail.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning October 04, 2020.

Whether the claimant's base period wages derive exclusively from on-call work.

Whether the claimant was an on-call worker during the period beginning October 4, 2020 and was only willing to accept on-call work.

Whether the employer's account may be charged for benefits for the period beginning October 4, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$198.00. The base period for the March 15, 2020 original claim consists of the fourth quarter of 2018 and the first, second and third quarters of 2019. The base period wages plus the wages for the fourth quarter of 2019 were as follows:

EMPLOYER	ACCT-LOC	2018/4	2019/1	2019/2	2019/3	2019/4
DES MOINES IND COMMUNITY	103234-000	4492	3855	3982	810	3577
PRIVATE VENTURE MANAGEMEN	528575-000	77				

The claimant has made consecutive weekly claims for the period beginning March 15, 2020 to the present. However, the claimant has not made herself available to work since that time and has not looked for work since that time.

At the time the claimant established the March 15, 2020 original claim, her most recent employer was Des Moines Independent Community School District. The claimant began her employment with the District in 2014. All of the work the claimant has performed for the District has been performed as a substitute teacher. All of the base period wages but the \$77.00 paid by Private Venture Management during the fourth quarter of 2018 derive from the substitute teaching performed for the Des Moines Independent Community School District. The claimant performed such work during the 2018-2019 academic year and during the 2019-2020 academic year.

The claimant last performed work for the District on Friday, March 13, 2020. At that time, the District was about to start its traditional spring break, which occurred the week of March 15-21, 2020.

The claimant asserts she suffered an ankle injury at work on Friday, March 13, 2020. The claimant asserts that a student ran in front of her and that the claimant fell on cement. The claimant was examined by a school nurse, but the incident did not give rise to a workers' compensation claim. Rather, the claimant addressed the matter with her personal physician. The claimant is of advanced years and suffers from arthritis. The claimant asserts her doctor advised her not to return to the employment at that time. The claimant asserts she notified the employer she would not be taking substitute teaching calls or assignments for the foreseeable future.

Due to the COVID-19 pandemic and a state directive to close schools to in-person classes, the District did not open for in-person classes following spring break week. For the same reason, the District continued to be closed to in-person classes through the May 29, 2020 last day of school. The District had no substitute teaching work available to the claimant during the period of March 17, 2020 through May 29, 2020.

As of September 7, 2020, classes resumed and the District again had substitute teaching work available for the claimant. However, the claimant was not ready to return to work and did not make further contact with the employer until December 29, 2020.

On October 27, 2020, the claimant submitted an application for Pandemic Unemployment Assistance. In the application, the claimant advised that her PEUC benefits were about to expire, that she was unable to return to work due to an underlying medical condition, age (78 years old), and because she was at high risk in connection with the COVID-19 virus. The claimant attached an October 2, 2020 note from her primary care physician. The note stated:

It is my medical opinion that Patricia Anne Piziali should not return to school as a substitute teacher this year. Due to her underlying medical conditions and age she is at high risk of complications from coronavirus infection. Being in a classroom puts her at high risk to become infected with COVID-19 which could have serious consequences for her.

On November 30, 2020, an Iowa Workforce Development Benefits Bureau deputy entered a decision allowing Pandemic Unemployment Assistance (PUA) for the period beginning March 14, 2020.

The District continued to have substitute teaching work available to the claimant up to the traditional Thanksgiving break, which started on Thursday, November 26, 2020 through Friday, November 27, 2020. The District resumed classes on effective Monday, November 30, 2020 and thereafter continued to have substitute teaching work available for the claimant until the start of the traditional winter break. Winter break began on Monday, December 21, 2020 and continued through Friday, January 1, 2021.

On December 29, 2020, the claimant notified the employer that her doctor would not let her return to work until she received the COVID-19 vaccine. The claimant provided a January 4, 2021 medical notice that provides the same basis for the claimant being unable to return to work as the October 2 2020 note. The claimant told the employer at the time of the December 29 contact that she was hoping to get vaccinated in March 2021.

The District resumed classes on Monday, January 4, 2021 and thereafter continued to have substitute teaching work available for the claimant until the start of the next spring break, which occurred the week of March 14-20, 2021. Classes resumed on Monday, March 22, 2021 and the employer thereafter had substitute teaching work available to the claimant until the June 3, 2021 last day of the 2020-2021 academic year.

In March 2021, the claimant gave notice to the employer that she would be unavailable for work through the end of the 2020-2021 academic year.

The employer uses an automated system to notify substitute teachers on the substitute teaching roster of available substitute teaching assignments. The employer communicates openings online and through an automated calling system. From December 2020 onward an automated alert system documented making over 1,000 automated calls to the claimant's phone number. The claimant did not answer any of the calls.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(2) 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. 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.

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

(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.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Admin. Code r. 871-24.23(1), (26) and (35) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

If a claimant to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant was not able to work and not available for work during the period beginning October 4, 2020 and is not eligible for regular state benefits for that period. During that period, the claimant was under the care of a doctor and had not been released to return to work. In addition, the claimant asserts she was incapacitated. The claimant was an on-call substitute teacher and was not available for such work, or any other work, during the period beginning October 4, 2020. Note, the claimant's base period wages do not derive exclusively from on-call work.

The able and available disqualification continued at the time of the August 17, 2021 appeal hearing.

DECISION:

The June 2, 2021, reference 08, decision is affirmed. The claimant was not able to work and not available for work during the period beginning October 4, 2020 and is not eligible for regular state benefits for that period. The able and available disqualification continued at the time of the August 17, 2021 appeal hearing.



James E. Timberland
Administrative Law Judge

November 3, 2021
Decision Dated and Mailed

jet/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are 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>.