

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY MUEGGENBERG
Claimant

DENISON COMMUNITY SCHOOL DISTRICT
Employer

APPEAL 21A-UI-07226-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)f – Part-Time Worker – Able and Available
Iowa Admin. Code r. 871-24.22(2)i – On-call and Substitute Workers
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On March 8, 2021, Mary Meuggenberg (claimant/appellant) filed an appeal from the March 3, 2021, reference 02, unemployment insurance decision that allowed benefits but removed the employer's, Denison Community School District's, insured wages from the claimant's base period because it determined she had reasonable assurance between academic terms. After due notice was issued, a telephone hearing was held on May 19, 2021. This case was heard at the same time as 21A-UI-09695-SN-T. The claimant participated. The employer participated through Business Manager Scott Larson. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories. Exhibits A, D-1 and D-2 were admitted into the record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the employer's account subject to charge?

FINDINGS OF FACT:

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

The claimant began working for the employer on October 20, 2006, as a substitute kitchen worker. She is not guaranteed a certain number of hours and works only when work is available. The claimant remains employed in that position. Her hourly wage in this position is \$12.07.

The claimant filed her claim for unemployment insurance benefits effective March 15, 2020. She filed for benefits for the weeks ending March 20, 2021 and March 27, 2021. The claimant reported receiving \$0 in earnings for the week ending March 20, 2021. The claimant reported

receiving \$76.00 in earnings for the week ending March 27, 2021. The claimant's base period includes wages from three other employers, three of which are non-education employers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's availability for work with this employer is moot.

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)i(3) 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.

(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 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Code section 96.19(38) provides:

Definitions.

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 96.7(2)a(2) provides, in relevant part:

Employer contributions and reimbursements.

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Iowa Admin. Code r. 871-23.43(4)a provides, in part:

Charging of benefits to employer accounts.

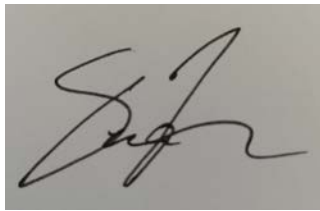
(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The claimant was hired to work on-call or as needed, and she is not considered unemployed within the meaning of the law as it pertains to this employer. 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. Thus, any reduction in hours is directly related to the on-call status as no regular hours are guaranteed. However, since the claimant has other base-period wages, the lack of regular work with this on-call employer is moot, except as to reporting wages. Partial benefits may be allowed, if she is otherwise eligible. Inasmuch as the current on-call employer is offering the same terms of employment as contemplated at hire, no benefit charges shall be made to its account. The claimant shall report all gross wages earned each week in which a claim is filed.

DECISION:

The March 3, 2021, reference 02, unemployment insurance decision is affirmed. The claimant's on-call status renders availability for this employment moot and she has other qualifying wages in the base period. Benefits are allowed, if the claimant is otherwise eligible, and the account of Denison Community School District (account number 101710) shall not be charged.



Sean M. Nelson
Administrative Law Judge
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June 2, 2021
Decision Dated and Mailed

smn/scn