

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN MARSHALL
Claimant

NORTH POLK COMMUNITY SCHOOL DIST
Employer

APPEAL 21A-UI-06865-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/10/20
Claimant: Appellant (1R)**

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code §96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.22(2)i(3) – On-call Wage Credits

STATEMENT OF THE CASE:

Megan Marshall, the claimant/appellant filed an appeal from the February 26, 2021, (reference 01) unemployment insurance decision that denied benefits as of May 10, 2020. The parties were properly notified about the hearing. A telephone hearing was held on May 17, 2021. Ms. Marshall participated and testified. The employer participated through Mary Ann Webb, payroll specialist. Official notice was taken of the administrative record.

ISSUES:

Is Ms. Marshall partially unemployed and able to and available for work?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Marshall began working for the employer, a base period employer, on January 15, 2020. She worked as an on-call substitute teacher. Ms. Marshall does not have non-educational wages in her base period that would make her monetarily eligible for unemployment insurance benefits.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Due to the pandemic, the employer closed its schools on March 23, 2020 and remained closed for the remainder of the school year. The employer did not have further work available for substitute teachers after the schools were closed. The employer did not pay Ms. Marshall after in-person classes were cancelled.

On June 24, 2020, Ms. Marshall informed the employer that she would not be returning to substitute teach for the 2020-2021 school year as she would begin working full-time for the Waukee Community School District in mid-August 2020. The employer removed Ms. Marshall from its call list.

Ms. Marshall applied for Pandemic Unemployment Assistance (PUA) benefits on May 27, 2020. The Benefits Bureau of Iowa Workforce Development has not yet decided if Ms. Marshall is eligible for PUA benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Marshall is not considered to be unemployed for purposes of Iowa employment security law.

Iowa Code § 96.19(38) provides:

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

Substitute teachers.

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)“(3).”

Because Ms. Marshall was hired to work as a substitute or as needed, and her wage history consists of on-call wages, she is not considered to be unemployed within the meaning of the law. 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. Therefore, any reduction in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. Ms. Marshall does not have other, non-educational wages in her base period that would make her monetarily eligible for benefits. Ms. Marshall is not eligible for regular, state-funded unemployment insurance benefits.

Even though Ms. Marshall is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

The February 26, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Marshall is not considered unemployed under Iowa law. Regular unemployment insurance benefits funded by the state of Iowa are denied. Ms. Marshall may be eligible for federally-funded benefits called “PUA” (see Note below).

REMAND:

The issue of whether Ms. Marshall is eligible for PUA benefits is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 26, 2021
Decision Dated and Mailed

dz/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits 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 under state law and you were or you are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- You can check on the status of a pending PUA application by submitting an online request at <https://www.iowaworkforcedevelopment.gov/unemployment-help-request> and choosing "**Pandemic Unemployment Assistance (PUA): waiting for approval**" in the "Support Need" drop-down menu.
- You can also check on the status of a pending PUA application by calling 866-239-0843.