

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**APRIL DEPRIEST**

Claimant

**APPEAL 21A-UI-19516-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WATERLOO COMMUNITY SCHOOL DIST**

Employer

**OC: 07/04/21**

**Appellant: Respondent (4R)**

Iowa Code § 96.1A(37) – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers  
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal of the August 31, 2021 (reference 03) unemployment insurance decision that found claimant was eligible for unemployment benefits effective July 4, 2021, because she was on a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on October 26, 2021. Claimant did not register for the hearing and did not participate. Employer Waterloo Community School District participated through employee relations and liability specialist Corey Minard. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant able to and available for work?

Was the claimant totally, partially, or temporarily unemployed effective July 4, 2021?

Was the claimant a substitute teacher?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a substitute para-educator. This employer is an educational institution. Claimant works on-call as needed while school is in session. She does not work during regular school breaks or between academic years or terms. Substitute teachers remain on a substitute teacher list until they remove themselves from the list.

The only other non-educational employer listed in the claimant's base period is Exceptional Persons, Inc. An August 22, 2021 (reference 01) decision denied claimant benefits based on a finding that she was not able to and available for work. Claimant did not appeal that decision.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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) 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)“(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)“(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)“(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).

Because claimant was hired to work as a substitute or as needed 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. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. Therefore, claimant cannot use the wage credits earned from this employer for the purposes of unemployment insurance benefit monetary eligibility.

However, claimant has other non-educational institution wage credits in the base period and may be monetarily eligible for benefits based upon the wage credits in the base period earned with that other employer. Claimant has not yet appealed an August 24, 2021 (reference 01) decision that disqualified her from receiving benefits from the non-educational institution employer.

The issue of whether claimant is monetarily eligible for benefits based upon her non-educational institution wage credits and benefits are allowed on that basis is remanded to the Benefits Bureau for an initial investigation and decision.

**DECISION:**

The August 31, 2021 (reference 03) decision is modified in favor of the appellant/employer. Claimant is not considered unemployed under Iowa law. Regular unemployment insurance benefits funded by the state of Iowa are denied. Claimant has other non-educational wages in her base period and may be monetarily eligible for benefits based on those wages alone.

**REMAND:**

The issue of whether claimant is monetarily eligible for benefits based upon her non-educational institution wage credits and benefits are allowed on that basis is remanded to the Benefits Bureau for an initial investigation and decision.



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Stephanie Adkisson  
Administrative Law Judge

November 10, 2021  
Decision Dated and Mailed

sa/scn