

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DAVID J BRUNTZ**

Claimant

**SIoux CITY COMMUNITY SCHOOL DIST**

Employer

**APPEAL NO. 20A-UI-05189-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**

**Claimant: Appellant (4/R)**

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Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

**STATEMENT OF THE CASE:**

David Bruntz filed a timely appeal from the May 26, 2020, reference 01, decision that denied benefits effective March 15, 2020 based on the deputy's conclusion that Mr. Bruntz was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 30, 2020. Mr. Bruntz participated. Dr. Rita Vannatta, Director of Human Resources, represented the employer. The parties waived formal notice on the issue of whether the claimant is disqualified for benefits due to the between academic terms disqualification set forth at Iowa Code section 96.4(5). Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. The administrative law judge has also taken official notice of the June 30, 2020, reference 02, decision regarding Mr. Bruntz's employment status with a second, non-school employer.

**ISSUES:**

Whether the claimant has been able to work and available for work since March 15, 2020.

Whether the claimant has been temporarily and/or partially unemployed during the period beginning March 15, 2020.

Whether the claimant is disqualified for benefits over the summer academic break due to the between academic terms disqualification set forth at Iowa Code section 96.4(5).

Whether the claimant has non-school employment base period wages upon which reduced benefits might be based.

Whether the school district's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: David Bruntz is employed by Sioux City Community School District as bus driver. Mr. Bruntz began his employment in 2017 and most recently performed work for the employer on Friday, March 13, 2020. Mr. Bruntz's most recent wage is \$20.22 per hour. Before the COVID-19 pandemic prompted the District to close schools, Mr. Bruntz performed morning bus driving duties from 6:15 or 6:30 a.m. to about 10:00 a.m. and afternoon bus driving duties from

2:00 p.m. until about 4:00 p.m. Mr. Bruntz's work days were Monday through Friday when school is in session. Mr. Bruntz has averaged six work hours per day and 30 work hours per week when school is in session. His regular daily wages totaled \$121.32. His regular weekly wages totaled \$606.60.

On March 15, 2020, the District notified Mr. Bruntz, that the District was temporarily closing schools due to the COVID-19 pandemic. The closure was initially scheduled to last until mid-April 2020. The District subsequently extended the closure through the scheduled last day of school, June 2, 2020. The District has traditionally paid wages to Mr. Bruntz for work performed through the last day of school, plus one more day of wages for the day after school ends. The District did not have any work for Mr. Bruntz to perform during the week of March 15-21, 2020. The employer thereafter assigned Mr. Bruntz to perform alternative bus-related duties such as washing buses, taking the buses to the repair shop, and driving Wi-Fi equipped buses to designated locations so students could access the Internet. Despite the school closure, the discontinuation of the regular bus driving work, and an inconsistent need for the alternate work, the District continued to pay Mr. Bruntz his usual wages for the time of the school closure through June 3, 2020. In other words, Mr. Bruntz received \$606.60 per week for each of the weeks between March 15, 2020 and May 30, 2020. Mr. Bruntz's pay for the week of April 5-11, 2020, included two days of regular wages, one day of so-called "holiday pay" for spring break, one day of vacation, and one so-call "personal day," for \$606.60 in total wages for the week. Mr. Bruntz's pay for the two-week period of April 12-21, 2020, included a day of vacation pay, but the wages each week totaled \$606.60. The District paid Mr. Bruntz \$363.96 in wages for the week that included June 1-3, 2020.

Before the scheduled end of the school year, the District contacted Mr. Bruntz to inquire whether he planned to return to perform bus driving duties when school recommenced on August 25, 2020, at the end of the summer break. Mr. Bruntz signed and returned a document to indicate that he planned to return for additional work. As a bus driver for the District, Mr. Bruntz has to bid on driving routes each year and had no assurance that he would receive the same driving assignment, comparable hours, or the associated comparable wages in the new academic year. The District has not communicated any such assurance to Mr. Bruntz.

During the 2020 summer break, the District did not have the same work available to Mr. Bruntz that it has made available during the 2019 summer break. During the 2019 summer break Mr. Bruntz had continued to perform part-time driving duties as a District employee in connection with a summer enrichment program operated by a third-party. During the summer of 2019, Mr. Bruntz had also performed part-time, on-call driving duties as a District employee in connection with summer sports activities. Mr. Bruntz planned to continue the summer employment during the 2020 academic break. However, the summer enrichment program was cancelled due to COVID-19. Mr. Bruntz signed up to drive in connection with scheduled sporting activities, all of which were subsequently cancelled due to COVID-19. There were no such opportunities during the week of June 7-13. Mr. Bruntz signed up to drive for an activity scheduled during the week of June 14-20, but the activity was later cancelled. Mr. Bruntz signed up to drive for two activities scheduled during the week of June 22-28, but both activities were later cancelled.

At the same time Mr. Bruntz was employed by the Sioux City Community School District, he was also employed part-time by Sioux City Newspaper, Inc. Mr. Bruntz's advises that he stepped away from that employment due to his concern about COVID-19. However, on June 30, 2020, an IWD Benefits Bureau deputy entered a reference 02 decision that allowed benefits to Mr. Bruntz effective March 15, 2020, provided Mr. Bruntz was otherwise eligible, based on the deputy's determination that Mr. Bruntz was still employed by Sioux City

Newspaper, but that the employer did not have the same work available as had existed during the base period. Sioux City Newspaper did not appeal the June 30, 2020, reference 02, and that decision became a "final agency decision."

Mr. Bruntz filed an original claim for unemployment insurance benefits that was effective March 15, 2020. IWD set his weekly benefit at \$528.00. Sioux City Community School District and Sioux City Newspaper are each base period employers in connection with the claim. Mr. Bruntz did not make timely weekly claims for the four weeks between March 15, 2020 and April 11, 2020 and did not receive any wages for that period.

Mr. Bruntz reopened his unemployment insurance claim effective April 12, 2020 and commenced making weekly claims. Mr. Bruntz's under-reported wages as indicated below. IWD paid regular benefits as indicated below.

<u>Benefit Week End Date</u>	<u>Wages Reports</u>	<u>Benefits Paid</u>
4/18/20	345.00	315.00
4/25/20	595.00	0.00
5/2/20	525.00	135.00
5/9/20	520.00	140.00
5/16/20	540.00	120.00
5/23/20	600.00	0.0
5/30/20	600.00	0.0
6/6/20	360.00	0.0
6/13/20	0.0	0.0
6/20/20	0.0	0.0
6/27/20	0.0	0.0.

The regular benefits Iowa Workforce Development paid to Mr. Bruntz for the weeks ending April 18, May 2, May 9 and May 16, 2020 totaled \$710.00.

For the weeks that ended April 18, May 2, May 9 and May 16, 2020, IWD paid Mr. Bruntz \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC). The FPUC benefits totaled \$2,400.00.

**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 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 Code Section 96.3(3) provides:

Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Administrative Code rule 871-24.2.(1)(g) provides, in pertinent part, as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

The weight of the evidence indicates that Mr. Bruntz has been physically and mentally able to perform work for the District, and has been available for his regular work with the District, since he established the claim for benefits that was effective March 15, 2020.

Mr. Bruntz is not eligible for benefits for the period of March 15, 2020 through April 11, 2020 due to failure to file timely weekly claims for those weeks in the context of allowing his claim to lapse.

Mr. Bruntz was not totally, partially, or temporarily unemployed from the District within the meaning of the law during the weeks between March 15, 2020 and May 30, 2020, because the employer continued to pay him his regular, full-time wages throughout that period. The \$606.00 in weekly wages the employer paid to Mr. Bruntz during the period of March 15, 2020 and May 30, 2020 exceeded his weekly unemployment insurance benefit amount. Mr. Bruntz is not

eligible for benefits for the period of March 15, 2020 through May 30, 2020 and benefits are denied for that period. The benefits Mr. Bruntz received for the period of April 12, 2020 through May 16, 2020 would be an overpayment of benefits.

Mr. Bruntz was partially unemployed during the week of May 31, 2020 through June 6, 2020. The District only had three days of work for Mr. Bruntz during that week, corresponding with the last two days of school and the addition day of wages for June 3, 2020. The \$363.96 in total wages (rounded to \$364.00), did not exceed Mr. Bruntz's weekly benefit amount plus \$15.00. Based on the partial unemployment analysis, Mr. Bruntz would be eligible for partial benefits for the week that ended June 6, 2020, provided he met all other eligibility requirements. Because the wages for that week exceeded the one-fourth of the \$528.00 weekly benefit amount, that portion of the wages that exceeded that threshold would be deductible from the unemployment insurance benefit eligibility. One-fourth of \$528.00 is \$132.00. \$364.00 minus \$132.00 equals \$232.00. Accordingly, Mr. Bruntz's benefit eligibility for the week that ended June 6, 2020 would be \$528.00 minus \$232.00, \$296.00, provided Mr. Bruntz meets all other eligibility requirements.

Effective June 3, 2020, Mr. Bruntz was also temporarily unemployed from the District employment, given the District's temporary lack of work for him beyond that point and the absence of wages beyond that point. Based on the temporary layoff, Mr. Bruntz would be eligible for benefits for the period that began May 31, 2020, provided he meets all other eligibility requirements.

The administrative law judge must also consider whether Mr. Bruntz is disqualified for unemployment insurance benefits during the traditional summer break period of June 4, 2020 through August 24, 2020 in light of the between-academic-terms disqualification set forth at Iowa Code section 96.4(5), which provides as follows:

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:

a. Benefits based on service in an instructional, research, or principal administrative capacity ...

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

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.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

871 IAC 24.51(3)(b) defines "nonprofessional employees" as follows:

Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than instructional, research, or principal administrative capacity.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

871 IAC 24.52(4) provides as follows:

Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph "e."

Mr. Bruntz is not disqualified for benefits for the period beginning June 4, 2020, based on the between-academic-terms disqualification set forth at Iowa Code section 96.4(5). Mr. Bruntz performed driving during the spring 2020 term, which duties came to an abrupt end mid-term due to the COVID-19 pandemic. Before the school year ended and the summer break commenced, Mr. Bruntz did not have reasonable assurance from the employer that he would be returned to his regular driving duties or that he would enjoy the same number of work hours in the new school year. The lack of reasonable assurance was based in part on the annual

bidding process, was based in part on the route bidding process, and was based in part on the additional uncertainty associated with the COVID-19 pandemic.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

In response to the economic impact of COVID-19, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers.

Based on the IWD announcement that employers will not be charged for benefits in connection with claims based directly or indirectly on COVID-19, the employer account of Sioux City Community School District will not be charged for benefits paid to the claimant in connection with the original claim that was effective March 15, 2020.

**DECISION:**

The May 26, 2020, reference 01, is modified in favor of the claimant as follows. The claimant has been able to work and available for work within the meaning of the law since March 15, 2020. The claimant is not eligible for benefits for the period of March 15, 2020 through April 11, 2020, based on the absence of weekly claims for those weeks. The claimant is also not eligible for benefits for the period March 15, 2020 through May 30, 2020 because he cannot be deemed totally, partially or temporarily unemployed during those weeks in light of the wages the employer continued to pay to the claimant for those weeks and in light of the fact that the wages paid for each of those weeks equaled or exceeded his weekly unemployment insurance benefit amount. The claimant was partially unemployed during the week that ended June 6, 2020 and is eligible for \$296.00 in regular benefits for that week, provided he meets all other eligibility requirements. In addition, the claimant was temporarily unemployed during the period that began June 4, 2020 and is therefore eligible for benefits for the period beginning May 31, 2020, provided he meets all other eligibility requirements. The claimant is not disqualified by the between-academic-terms disqualification provision in Iowa Code section 96.4(5) for benefits paid during the traditional summer break period of June 4, 2020 through August 24, 2020 and the corresponding benefit weeks between May 31, 2020 and August 29, 2020. The employer's account shall not be charged in connection with the COVID-19 based original claim that was effective March 15, 2020.

This matter is remanded to Benefits Bureau for entry of overpayment decision regarding the regular benefits and Federal Pandemic Unemployment Compensation the claimant received for four weeks between April 12, 2020 and May 16, 2020.



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James E. Timberland  
Administrative Law Judge

August 4, 2020  
Decision Dated and Mailed

jet/mh