

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BARBARA A TUSHLA
Claimant

APPEAL NO. 20A-UI-05204-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY COMMUNITY SCHOOL DIST
Employer

OC: 03/15/20
Claimant: Appellant (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

Barbara Tushla 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 Ms. Tushla could not be deemed partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 30, 2020. Ms. Tushla participated and presented additional testimony through Matt Ohman. Dr. Rita Vannatta 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). Exhibits 1, A, B and C were received into evidence. The administrative law judge took official notice of the following agency administrative records: KCCO, DBRO, KPYX, and WAGE-A.

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: Barbara Tushla is employed by Sioux City Community School District as a full-time para-educator/instructional assistant. Ms. Tushla began with the District approximately 13 year ago. Ms. Tushla is assigned to Hunt Elementary School. Principal Cammie Barker is Ms. Tushla's immediate supervisor. Her regular work duties involve providing instructional support in all classrooms. Ms. Tushla's regular work hours are 8:40 a.m. to 3:40 p.m., Monday through Friday, when school is in session. Ms. Tushla is paid for 6.5 hours of work per day. Her wage is \$15.28 per hour. Her regular wages for a day's work total \$99.32. Her regular wages for a

week's work total \$496.60. Ms. Tushla performs work for the District from the start of school in August until the last day of school in June. The District has traditionally paid wages to Ms. Tushla for work performed through the last day of school, plus one more day of vacation pay for the day after school ends. Ms. Tushla does not perform work for the District during the traditional summer break that runs from early June to late August. Ms. Tushla has elected to have her pay for work performed during the academic year spread out over 12 months, which results in a lower bi-weekly payment of wages over 12 months compared to the \$496.60 in wages per week earned during the academic year.

Ms. Tushla most recently performed her regular duties for the District on March 13, 2020. On March 15, 2020, the District notified Ms. Tushla 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 did not have Ms. Tushla's regular work available subsequent to the school closure. However, the District continued to pay Ms. Tushla her regular wages through June 3, 2020, the day after the scheduled last day of school.

Prior to the scheduled last day of school, the District and Ms. Tushla had an agreement that Ms. Tushla would return to her regular duties on August 21, 2020 in connection with the start of classes on August 25, 2020.

Ms. Tushla established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set her weekly benefit amount at \$391.00. As of the June 30, 2020 appeal hearing date, Ms. Tushla had made weekly claims for each of the 15 benefit weeks between March 15, 2020 and June 27, 2020. Ms. Tushla reported wages and received regular benefits as follows. BWED means benefit week end date. Ms. Tushla's weekly wage reports did not accurately reflect the wages or other pay *earned* for the particular week, but were instead based on Ms. Tushla's election to receive reduced biweekly payments spread out over 12 months.

<u>BWED</u>	<u>Wages Reported</u>	<u>Vacation</u>	<u>Holiday</u>	<u>Regular Benefits Paid</u>
03/21/20	372.00			116.00
03/28/20	372.00			116.00
04/04/20	372.00			116.00
04/11/20	224.00	74.00	74.00	116.00
04/18/20	298.00		74.00	116.00
04/25/20	372.00			116.00
05/02/20	372.00			116.00
05/09/20	372.00			116.00
05/16/20	372.00			116.00
05/23/20	372.00			0.00
05/30/20	298.00		74.00	0.00
06/06/20	298.00	74.00		0.00
06/13/20	372.00			0.00
06/20/20	372.00			0.00
06/27/20	372.00			0.00

The regular benefits that Iowa Workforce Development paid to Ms. Tushla for the nine weeks between March 15, 2020 and May 16, 2020 totaled \$1,044.00.

IWD also paid Ms. Tushla \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for the seven weeks between March 29, 2020 and May 16, 2020. The FPUC benefits totaled \$4,200.00.

Ms. Tushla has a second, part-time employment that was also impacted by the COVID-19 pandemic. The second employment is a youth coordinator position in the Beyond the Bell program operated by Siouxland Human Investment Partnership (SHIP). Ms. Tushla ordinarily works year-round for SHIP, but the hours increase substantially in July. SHIP laid off Ms. Tushla effective March 16, 2020 in response to COVID-19 based school closure. SHIP cancelled summer activities due to COVID-19. SHIP received notice of Ms. Tushla's claim for benefits, but elected not to protest the claim.

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.

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

Mr. Tushla 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 her regular, full-time wages throughout that period.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were *earned*. See Iowa Administrative Code rules 871-24.2(1)(g)(3)(2) and 871-24.2(2)(e)(2). The reporting requirement is addressed in the 2019 Unemployment Insurance Claimant Handbook at page 8:

What to Report on the Weekly Claim?

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

2019 English Unemployment Insurance Claimant Handbook Updated 1-1-20.pdf.

Assuming the vacation pay and holiday pay are accurately characterized as such, the actual weekly wages, if properly reported as wages *earned* during the benefit weeks in question, should have been reported as follows.

<u>BWED</u>	<u>Wages Reported</u>	<u>Vacation</u>	<u>Holiday</u>
03/21/20	497.00		
03/28/20	497.00		
04/04/20	497.00		
04/11/20	298.00	99.00	99.00
04/18/20	397.00		99.00
04/25/20	497.00		
05/02/20	497.00		
05/09/20	497.00		
05/16/20	497.00		
05/23/20	497.00		
05/30/20	397.00		99.00
06/06/20	198.00	99.00	
06/13/20	0.00		
06/20/20	0.00		
06/27/20	0.00		

Because the actual weekly wages *earned* from the District employment equaled or exceeded Ms. Tushla's \$391.00 weekly benefit amount for each of the benefit weeks between March 15, 2020 and May 30, 2020, Ms. Tushla is not eligible for benefits for any of the 11 weeks between March 15, 2020 and May 30, 2020. Benefits paid to her for those weeks would be an overpayment of benefits.

Mr. Tushla was partially unemployed from the District during the week of May 31, 2020 through June 6, 2020. There were only three days that week for which the District paid wages. Those days corresponded with the last two days of the school year and the additional day of wages for June 3, 2020. The \$297.00 in combined wages/vacation did not exceed Ms. Tushla's weekly benefit amount plus \$15.00. Based on the partial unemployment analysis, Ms. Tushla would be eligible for partial benefits for the week that ended June 6, 2020, provided she met all other eligibility requirements.

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

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. 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.

The administrative law judge must also consider whether Mr. Tushla 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 in 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 during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

...

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.

Iowa Administrative Code rule 871-24.51(3)(a)(1) defines "professional employees" as follows:

24.51(3) Employment definitions.

a. Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution which consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services which consist of directing or supervising the instructional activities of others; or services which consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

Iowa Administrative Code rule 871-24.51(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.

Iowa Administrative Code rule 871-24.52(3) provides as follows:

Professional employee. Unemployment insurance payments which are based on school employment shall not be paid to a professional employee for any week of unemployment which begins between two successive academic years, between regular terms, or during a period of paid sabbatical leave if the individual has a contract or reasonable assurance to perform services in any such capacity for any educational institution for both such academic years or both such terms. However, unemployment insurance payments can be made which are based on non-school-related wage credits pursuant to subrule 24.52(6).

Due to the between-academic-terms disqualification, and for the period beginning June 7, 2020, Ms. Tushla is disqualified for benefits that are based on her employment with the Sioux City Community School District. Ms. Tushla performed instructional duties for the District during the spring 2020 term. Prior to the end of the term, Ms. Tushla had reasonable assurance that she would be returning on August 21, 2020 to commence performing the same or similar duties in connection with the school year that will begin on August 25, 2020.

Iowa Administrative Code rule 871-24.52(6) provides as follows:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Because Ms. Tushla has sufficient non-school base period wage credits from SHIP to be monetarily eligible for benefits pursuant to Iowa Code section 96.4(4), Ms. Tushla, remains eligible for reduced benefits based on those non-school wage credits, provided she meets all other eligibility requirements.

DECISION:

The May 26, 2020, reference 01 decision, 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 March 15, 2020 through May 30, 2020 because she 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 earned and paid for each of those weeks equaled or exceeded her weekly unemployment insurance benefit amount. The claimant was partially unemployed during the week that ended June 6, 2020 and is eligible for benefits for that week, provided she 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 she meets all other eligibility requirements. The claimant is disqualified for *school-based* benefits by the between-academic-terms disqualification provision in Iowa Code section 96.4(5) in connection with the benefit weeks between June 7, 2020 and August 29, 2020. The claimant has sufficient non-school base period wage credits to be monetarily eligible for benefits pursuant to Iowa Code section 96.4(4) and remains eligible for reduced benefits based on those non-school wage credits, provided she meets all other eligibility requirements. The employer account of Sioux City Community School District shall not be charged in connection with the COVID-19 based original claim that was effective March 15, 2020.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the regular benefits the claimant received for nine weeks between March 15, 2020 and May 16, 2020. This matter is also remanded to the Benefits Bureau for entry of an overpayment decision regarding the Federal Pandemic Unemployment Compensation the claimant received for seven weeks between March 29, 2020 and May 16, 2020.



James E. Timberland
Administrative Law Judge

August 3, 2020
Decision Dated and Mailed

jet/sam