

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBORAH K KRUMMEL
Claimant

APPEAL NO. 20A-UI-04777-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAUKEE COMMUNITY SCHOOL DISTRICT
Employer

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Public Law 116-136 - Coronavirus Aid, Relief, and Economic Security Act

STATEMENT OF THE CASE:

Deborah Krummel filed a timely appeal from the May 21, 2020, reference 01, decision that denied benefits for the week of March 15-21, 2020, based on the deputy's conclusion that Ms. Krummel worked enough hours that week to be considered employed, and that she unduly limited her availability for other work. After due notice was issued, a hearing was held on June 10, 2020. Ms. Krummel participated. The employer did not provide a telephone number for the appeal hearing and did not participate. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant met the availability requirement and is eligible for benefits for the benefit week of March 15-21, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Deborah Krummel established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set Ms. Krummel's weekly benefit amount at \$238.00. Ms. Krummel made weekly claims that included a claim for the benefit week that ended March 21, 2020. Ms. Krummel received \$238.00 in regular benefits for the week that ended March 21, 2020.

Ms. Krummel's base period consists of the fourth quarter of 2018 and the first, second, third and fourth quarters of 2019. Ms. Krummel's base period wages consist of wages from Waukeel Community School District and Adel-DeSoto-Minburn Community School District (ADM). The base period wages are based on substitute teaching Ms. Krummel performed for the two districts. Ms. Krummel most recently performed work for the Waukeel Community School District in November 2019. Ms. Krummel would learn of substitute teaching opportunities through an Internet-based clearinghouse in which both districts participated. Ms. Krummel would use that same Internet-based clearinghouse to indicate her availability for teaching assignments. Once Ms. Krummel accepted a particular substitute teaching assignment, the Internet-based clearinghouse would mark Ms. Krummel as not available for that particular day

and she would not receive notice of additional teaching opportunities for the day in question. During the 2019-2020 school year, Ms. Krummel had many substitute teaching assignments with ADM and therefore did not hear about teaching opportunity at Waukee that might have been scheduled for the same days she worked at ADM.

Ms. Krummel filed her claim for benefits in response to receiving notice from both districts that the districts would not be reopening for classes following Spring Break week. Spring Break was the week of March 15-21, 2020. Neither district had work for Ms. Krummel during the week of March 15-21, 2020. The initial closure notices indicated that the schools would be closed until the middle of April 2020. A second round of notices indicated that the closures would extend to the end of the school year.

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 Admin. Code r. 871-24.22(2)(i)(2) 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...
i. On-call workers.

...

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

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 Covid-19 pandemic, Iowa Workforce Development published on its website a list of Covid-19-related scenarios under which a claimant would be eligible for unemployment insurance benefits. The scenarios create limited and temporary exceptions to the able and available requirements set forth at Iowa Code section 96.4(3). These scenarios included circumstances wherein the employer must temporarily shut down and circumstances in which a claimant who performs services for a school is impacted by the school closure.

The weight of the evidence in the record establishes that Ms. Krummel was genuinely attached to the labor market and was available for work at the time she established the claim for benefits that was effective March 15, 2020. This conclusion is supported by the substantial wages Ms. Krummel earned from substitute teaching during the fourth quarter of 2019 and the first quarter of 2020. Though Ms. Krummel's substitute teaching services were much more heavily utilized by ADM, the COVID-19 related shutdown of the Waukee Community School District interfered with her ability to obtain work with that district. With the shutdown, the district was in fact no longer able to offer the same substitute teaching relationship that had existed up to that point. Neither the ADM nor the Waukee school districts had work for Ms. Krummel during the week of March 15-21, 2020. With the shutdown, Ms. Krummel did not have reasonable assurance that she would receive the same employment after Spring Break as she enjoyed

before Spring Break. Ms. Krummel is eligible for benefits for the week of March 15-21, 2020, provided she is otherwise eligible.

In response to the economic impact of COVID-19 pandemic, 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 this Agency pronouncement, the employer account of Waukee Community School District will not be charged for benefits paid to Ms. Krummel for the week of March 15-21, 2020.

DECISION:

The May 21, 2020, reference 01, decision is reversed. Based on the COVID-19 exceptions to the availability requirements, the claimant met the availability requirement during the week of March 15-21, 2020 and was eligible for benefits for that week, provided she meets all other eligibility requirements. The employer's account shall not be assessed for benefits paid to the claimant for the week of March 15-21, 2020.



James E. Timberland
Administrative Law Judge

July 8, 2020
Decision Dated and Mailed

jet/sam