

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KOURTNEY KILBURG

Claimant

APPEAL 20A-UI-14925-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLEVUE COMMUNITY SCHOOL DIST

Employer

OC: 05/31/20

Claimant: Appellant (4R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.1A(37) – Total and Partial Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Kourtney Kilburg (claimant) appealed a representative's October 28, 2020, decision (reference 01) that denied benefits based on her continued employment with Bellevue Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 19, 2021. The claimant participated personally. The employer participated by Penny Medinger, Business Manager. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from August 27, 2019, through January 10, 2020, as a substitute para-professional. The claimant worked approximately once every two weeks.

The claimant was also a substitute para-professional for Andrew Community School District. Andrew Community School District hired the claimant to work part-time in their daycare and the claimant stopped working for the employer. In February 2020, Andrew Community School District hired the claimant as a full-time para-educator. She was not paid when school was not in session.

The claimant is an independent contractor in a hair salon. She filed for state unemployment insurance benefits in an effort to receive Pandemic Unemployment Assistance. The claimant has not applied for benefits at www.iowaworkforcedevelopment.gov/pua.

The claimant filed for unemployment insurance benefits with an effective date of May 31, 2020. Her weekly benefit amount was determined to be \$155.00. The claimant had wages for on-call work from Andrew Community School District and Bellevue Community Schools in her base period. She also had wages from Pure Salons. A representative's decision dated October 14, 2020, reference 02, found the claimant had earned ten times her weekly benefit amount in insured worker after the disqualifying separation from Pure Salons.

The claimant received benefits of \$155.00 per week from May 31, 2020, to the week ending August 15, 2020. This is a total of \$1,705.00 in state unemployment insurance benefits after the separation from employment. She also received \$4,800.00 in Federal Pandemic Unemployment Compensation for the eight-week period ending July 25, 2020.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). During the claimant's employment, the claimant worked on-call. An employee cannot be considered totally, partially, or temporarily employed when she performs the same work for the same wages for the employer. The claimant worked in the same manner in which she was hired until her separation. This employer is relieved of charges.

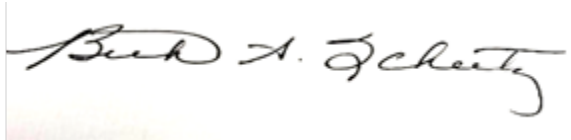
The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The October 28, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant worked in the same manner in which she was hired until her separation. This employer is relieved of charges.

The issue of the claimant's separation from employment is remanded for determination.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge
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February 4, 2021
Decision Dated and Mailed

bas/kmj