

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEROMY L KEEHN**  
Claimant

**CAL COMMUNITY SCHOOL DISTRICT**  
Employer

**APPEAL 16A-UI-06968-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/15  
Claimant: Respondent (4R)**

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Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 15, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 12, 2016. Claimant did not participate. Employer participated through Steve Lane, Superintendent and Amanda Heiden, Board Secretary.

**ISSUE:**

Was the claimant able to and available for work within the meaning of the statute in order to be eligible for unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked only as a substitute teacher working on-call or when needed for this employer. No substitute teacher, including the claimant, is ever given a permanent contract by the school district. The claimant may be called back to work when the new school year begins if he is needed to substitute for a permanent teacher.

The claimant has other wages in his base period, from at least two other employers. Agency records indicate the claimant may be eligible for unemployment insurance benefits based on wages from a previous employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

Iowa Code § 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".

871 IAC 24.52(6) provides:

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 § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

871 IAC 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) "i"(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) "i"(3).

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

Substitute teachers are not considered to be unemployed within the meaning of the law when the only base period wage credits are related to "on-call" work. 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 sporadic availability of available work as no regular hours were guaranteed. Accordingly, benefits must be denied.

**REMAND:**

The issue of whether the claimant may be eligible for benefits based upon wages earned with other employers is remanded to the Unemployment Insurance Service Center for a determination.

**DECISION:**

The June 15, 2016, (reference 02) decision is modified in favor of the appellant. The claimant is not considered unemployed because of his substitute teacher on-call employment status. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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