

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDY K DUNN
Claimant

WEST DELAWARE CO COMMUNITY SCH
Employer

APPEAL 21A-UI-00847-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.4(5) – Eligibility Between Academic Years
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.22(52)10(c) – Benefit Eligibility - Substitute Teachers

STATEMENT OF THE CASE:

On December 14, 2020, the claimant filed an appeal from the December 10, 2020, (reference 01) unemployment insurance decision that denied unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2021. Claimant Judy K. Dunn participated personally. Employer West Delaware County Community School District participated through Lynnette Engel, Director of Finance. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2015. Claimant began working for employer as a substitute teacher in January 2015 for the school district. Claimant does not have non-educational wages in her base period that would make her monetarily eligible for unemployment insurance benefits.

Claimant's last day of work was on March 13, 2020. On March 16, 2020, the school shut down due to COVID and remained closed for the remainder of the school year. Claimant had several assignments scheduled that were cancelled because of the closure. Employer did not have further work available for substitutes after in-person classes were cancelled. Employer did not pay claimant after in-person classes were cancelled.

Claimant remains on the substitute list for the 2020-2021 school year. She has not yet worked this school year. Claimant explained that she feels it is too dangerous to return to work because of health risks and COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be unemployed for purposes of Iowa employment security law.

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 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 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Admin. Code r. 871-24.52(10)(c) states:

Substitute teachers.

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).

Because claimant was hired to work as a substitute or as needed, and the wage history consists of on-call wages, she is not considered to be unemployed within the meaning of the law. 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 on-call status when work is not available as no regular hours were guaranteed. Claimant does not have other, non-educational wages in her base period that would make her monetarily eligible for benefits. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. Claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

DECISION:

The December 10, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant is not considered unemployed under Iowa law. Regular unemployment insurance benefits funded by the state of Iowa are denied. Claimant may be eligible for federally-funded benefits called “PUA,” but must apply for those benefits, as noted in the instructions below.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 25, 2021
Decision Dated and Mailed

lj/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**