

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY A CARR
Claimant

CITY OF DES MOINES PAYROLL DEPT-B
Employer

APPEAL 16A-UI-07271-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/05/16
Claimant: Respondent (4-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The employer filed an appeal from the June 24, 2016, (reference 01) unemployment insurance decision that allowed benefits beginning June 5, 2016. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2016. Claimant participated. Employer participated through human resources generalist Vivone Abdel-Razeq.

ISSUES:

Is the claimant able to and available for work?

Does the claimant have reasonable assurance of continued employment in the next school term or year?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a school crossing guard for the City of Des Moines during the 2015 – 2016, school year. School crossing guards are hired by the City of Des Moines to work for the school. School crossing guards are city employees. Claimant was hired as a regular, less than half time employee. Claimant works approximately ten hours a week during the school year. The employer makes it known when the school crossing guards are hired, that school crossing guards are only working during the school year. School crossing guards are told that they can come back the next school year. Claimant's last day of work for the 2015 – 2016 school year was June 2, 2016. Claimant is expected back the first day of school, which is around August 25, 2016. Claimant has been an active employee since October 9, 2012. Since the school year ended on June 2, 2016, there has been no work available for claimant.

In May 2016, claimant received a letter from Dennis (her supervisor) in the traffic control area that stated that he was retiring and the school district was looking to find its own crossing guards. The letter did not say anything about her continued employment in the next school year (2016 – 2017). On June 27, 2016, claimant received a phone call from the Sgt. Jack Beardsley,

a supervisor for the City of Des Moines in the traffic control area (the department claimant worked in). Sgt. Beardsley stated that the school district had not secured their own crossing guards, so claimant would be working this upcoming school year (2016 – 2017).

Although claimant was told she did not need to look for work by an Iowa Workforce Development employee because she was on temporary layoff, she has been looking to work since June 2, 2016. Claimant has certain physical limitations, such as mobility that limits the type of work she can perform. Claimant has performed at least two work searches a week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not temporarily laid off as of June 27, 2016 and does have reasonable assurance of returning to work the following academic term or year as of June 27, 2016.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Code § 96.4-(5)-a provides:

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.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall

not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

- (1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and
- (2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

- (6) 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.

In this case, claimant did not have other non-educational institution wage credits in the base period. After June 2, 2016, the employer did not have any more work available for claimant because the 2015 – 2016 school year had ended. In May 2016, claimant's supervisor informed her that the school district is considering employing their own school crossing guards, which would have eliminated claimant's job with the employer. Because of this communication from her supervisor in May 2016, claimant did not have a reasonable assurance of returning to work for the following academic term or year (2016 – 2017) when the school year ended on June 2, 2016, and thus was eligible for unemployment insurance benefits. However, on June 27, 2016, Sgt. Beardsley contacted claimant and informed her that the schools did not secure their own crossing guards, so she would be working the 2016 – 2017 school year. Therefore, as of June 27, 2016, claimant did have reasonable assurances of continued employment and is no longer considered unemployed.

Claimant is eligible for benefits beginning June 5, 2016 to June 25, 2016. As of June 27, 2016, when the employer gave claimant reasonable assurance of continued employment for the 2016 – 2017, school year, she is not considered unemployed.

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".

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

Claimant has been actively looking to work since June 2, 2016. Claimant has some physical limitations, such as mobility and has restricted her job search accordingly; however, she has performed at least two work searches a week. Claimant has established she is able to work and available for work since June 2, 2016.

DECISION:

The June 24, 2016, (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant does have reasonable assurance of returning to work the following academic year or term as of Monday, June 27, 2016. Benefits are granted from June 5, 2016 to June 25, 2016, provided claimant is otherwise eligible.

REMAND:

The issue of whether claimant has been overpaid unemployment insurance benefits after she was given reasonable assurances of continued employment on June 27, 2016 as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs