

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOANN M ALATORRE
Claimant

APPEAL NO. 20A-UI-10593-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 06/07/20
Claimant: Appellant (1)

Section 96.4-5 – Reasonable Assurance
Section 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 21, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 19, 2020. Claimant participated personally. Employer participated by Rhonda Wagoner, Lashone Mosley, and Joy Linquist. Employer's Exhibits 1-4 and Claimant's Exhibit A were admitted into evidence

ISSUE:

The issue in this matter is whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: claimant was employed as a bus driver for the Des Moines Independent Community School District during the 2019 – 2020 school year. Employer on March 15, 2020 offered reasonable assurance of work for the next academic year by sending out a letter indicating claimant would be hired for the next school year.

In addition to working as a full time driver during the school year for employer, claimant had, for years, worked as a summer school driver. As claimant had driven for 18 years she was near the top of the line for summer driving assignments. For years, she'd gotten to drive near fulltime hours during the summer to drive students to summer school. This summer, claimant's hours were greatly reduced as she could only drive a few teams to athletic events.

Employer argues that there are no guaranteed hours for employees over the summer and claimant was an academic year full time employee. She is able to apply for summer hours, and was granted the summer hours available.

Bus driving is claimant's only employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(5)b 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:

b. Benefits based on service in any other capacity for 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 terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

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.

The claimant did have reasonable assurance of continued employment for the 2020-2021 school year. As a result, the claimant is not considered unemployed. Although claimant has a reasonable assurance for the school year, the matter before the administrative law judge is whether claimant's years of working summer hours equates to a reasonable expectation that she would be given those hours, or compensated through unemployment for the hours not given.

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.

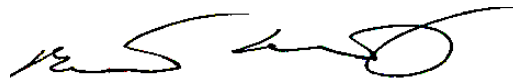
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

In this matter, claimant's regular job is the school year bus driving. As employer mentioned, there are year round bus drivers; claimant is not one of them. Claimant's work as a summer driver is not guaranteed, and is not her regular job. Therefore, it is not compensable as unemployment.

DECISION:

The decision of the representative dated August 21, 2020, reference 01 is affirmed. Claimant is not eligible to receive unemployment benefits from employer outside of the academic year.



Blair A. Bennett
Administrative Law Judge

October 22, 2020
Decision Dated and Mailed

bab/scn