

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY G KAUZLARICH
Claimant

MOULTON UDELL COMMUNITY SCHOOL
Employer

APPEAL 20A-UI-09729-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Appellant (1/R)**

Iowa Code § 96.4(3) – Able and Available for Work
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Admin. Code r. 871-24.51(6) – Reasonable Assurance
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

STATEMENT OF THE CASE:

Kelly Kauzlarich (claimant) appealed a representative's August 3, 2020, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Moulton Udell Community School (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 29, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is between successive terms with an educational institution and had reasonable assurance of employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an educational institution. The claimant was hired in 2009. In 2016, the claimant changed his status to substitute teacher. The claimant knew that the position followed the academic school year. He does not work during the summer or during holidays. He planned to return in the fall of 2020.

The claimant also works for Centerville Community School District as a substitute teacher and substitute bus driver. All the claimant's wages in his base period are from on-call work.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. His weekly benefit amount was determined to be \$75.00. The claimant received a total of \$769.47 in state unemployment insurance benefits and \$6,000.00 in Federal Pandemic Unemployment Compensation after May 17, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.52(10)e provides:

(10) Substitute teachers.

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).

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.

Iowa Admin. Code r. 871-24.22(2)i(2) provides:

Benefit 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.

i. On-call workers.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

Iowa Admin. Code r. 871-24.52(9) provides in part:

(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

The claimant is employed by an educational institution and had reasonable assurance that his employment would continue following the employer's established and customary vacation period and academic year. The claimant has no other non-educational institution wage credits in the base period. All wages in his base period are from on-call work. As such, benefits are denied.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he 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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

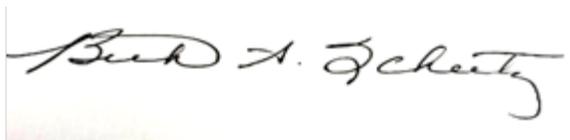
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's August 3, 2020, decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer. Benefits are denied effective May 17, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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

September 30, 2020
Decision Dated and Mailed

bas/scn