

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**JACKIE L PEIFFER**  
Claimant

**CARROLL-KUEMPER**  
Employer

**APPEAL NO. 22R-UI-13975-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20  
Claimant: Appellant (1)**

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Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

**STATEMENT OF THE CASE:**

This matter is before the administrative law judge pursuant to an Employment Appeal Board remand in Hearing Number 22B-UI-04496 for a decision on the merits of the appeal. On February 14, 2022, Cynthia Peiffer, legal guardian for Jackie Peiffer (claimant), filed an appeal from the February 8, 2021 (reference 02) decision that denied benefits effective May 24, 2020, based on the deputy's conclusion that the claimant was an employee of an educational institution and was unemployed between academic years or terms. The Employment Appeal Board has deemed the appeal timely. After due notice was issued, a hearing was held on March 23, 2022. Claimant's legal guardian, Ms. Peiffer, participated. The claimant did not participate. Paul Janke represented the employer and presented additional testimony through Kris Collison. There were five appeal numbers set for a consolidated hearing On March 23, 2022: 22A-UI-04496-JT-T, 22A-UI-04497-JT-T, 22A-UI-04499-JT-T, 22A-UI-04500-JT-T, and 22A-UI-04501-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the guardianship and conservatorship established in Calhoun County Case Number GCPRO12425. The administrative law judge took official notice of the reference 01 through reference 06 decisions. The administrative law judge took official notice of the record of benefits disbursed to the claimant (DBRO, KPYX and KPY1). The administrative law judge took official notice of the claimant's quarterly wages (WAGE-A) and of the employer's letter dated June 25, 2021 (attached to reference 01 supplemental documents). The administrative law judge took official notice of the IWD decision docketing records (NMRO).

Pursuant to the Employment Appeal Board remand, the Appeals Bureau has assigned new Appeal Numbers: 22R-UI-13975-JT-T, 22R-UI-13976-JT-T, 22R-UI-13977JT-T, 22R-UI-13978-JT-T, and 22R-UI-13979-JT-T.

**ISSUE:**

Whether the claimant is ineligible for benefits effective May 24, 2020, based on the between-academic terms disqualification set forth at Iowa Code section 96.4(5).

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jackie Peiffer is the claimant. Jackie Peiffer is an adult person with an intellectual disability characterized as moderate. Jackie Peiffer is unable to read or write. Jackie Peiffer shares an apartment in Carroll with another adult with disabilities. Jackie Peiffer receives home and community based support that includes five hours of supervised help with activities of daily living and additional day-program assistance. Jackie Peiffer’s parents, Cynthia Peiffer and Duane Peiffer, are Jackie Peiffer’s legal guardians. Cynthia and Duane Peiffer reside in Fonda, Iowa, about 36 miles from Jackie Peiffer’s home in Carroll.

The claimant’s mother and legal guardian, Cynthia Peiffer, established an original claim for the claimant that was effective March 29, 2020. Iowa Workforce Development set Jackie Peiffer’s weekly benefit amount for regular benefits at \$118.00. IWD paid \$118.00 in weekly regular benefits for each of the weeks between March 29, 2020 and August 22, 2020. The regular benefits disbursed to Jackie Peiffer included \$1,534.00 in regular benefits paid for the 13 weeks between May 24, 2020 and August 22, 2020. IWD also paid \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for each of the weeks between March 29, 2020 and July 25, 2020. The FPUC benefits disbursed to Jackie Peiffer included \$5,400.00 in FPUC benefits for the nine weeks between May 24, 2020 and July 25, 2020. IWD also paid Jackie Peiffer \$300.00 in weekly Lost Wages Assistance Payments (LWAP) for each of the four weeks between July 26, 2020 and August 22, 2020. The LWAP benefits totaled \$1,200.00. All benefits were direct-deposited to a bank account.

Jackie Peiffer’s base period for purposes of the March 29, 2020 original claim consisted of the fourth quarter of 2018 and the first, second and third quarters of 2019. Jackie Peiffer’s base period wages were as follows:

<u>EMPLOYER</u>	<u>ACCT-LOC</u>	<u>2018/4</u>	<u>2019/1</u>	<u>2019/2</u>	<u>2019/3</u>
CARROLL-KUEMPER	108530-407	1388	1086	1240	1382
"NEW HOPE VILLAGE INC	133360-000	1347	1281	1350	1220

Jackie Peiffer’s more recent quarterly wages were as follows:

<u>EMPLOYER</u>	<u>ACCT-LOC</u>	<u>2019/4</u>	<u>2020/1</u>	<u>2020/2</u>	<u>2020/3</u>	<u>2020/4</u>
CARROLL-KUEMPER	108530-407	1311	1134	337	374	1569
"NEW HOPE VILLAGE INC	133360-000	1272				

Iowa Workforce Development records reflect that base period New Hope Village, Inc. did not protest the claim for benefits.

Cynthia Peiffer established the March 29, 2020 original claim in response to Kuemper Catholic School System (Carroll-Kuemper) temporarily laying off Jackie Peiffer from her part-time food service dishwasher position effective March 16, 2020. Jackie Peiffer has worked for Carroll-Kuemper since 2004. The layoff occurred in the context of Carroll-Kuemper discontinuing classes for the remainder of the 2019-2020 academic year in response to Governor Reynolds’ COVID-19 Proclamation of Disaster Emergency. The 2019-2020 academic year was scheduled to end on May 25, 2020.

On May 7, 2020, Carroll-Kuemper sent Jackie Peiffer a “reasonable assurance” letter. Jackie Peiffer was unable to read or understand the letter. The letter set forth the employer’s expectation that Jackie Peiffer would return to the same part-time dishwasher position at the

start of the 2020-2021 academic year. The letter indicated the hourly wage would be increased to \$10.15 an hour. The letter stated that Jackie Peiffer could expect to receive 15 hours of work per week, which was somewhat higher than the number of hours Jackie Peiffer had worked during in the dishwashing position during the 2019-2020 academic year prior to the layoff.

Jackie Peiffer returned to the Carroll-Kuemper part-time dishwasher position on August 25, 2020 at the start of the 2020-2021 academic year under the terms set forth in the reasonable assurance letter.

The employer sometimes makes temporary on-call summer work available to Jackie Peiffer. Jackie Peiffer has assisted with summer meals as needed. During the summer of 2019, Jackie Peiffer asked the Carroll-Kuemper custodial staff if she could work part-time assisting the with cleaning buildings during the summer break. The employer granted Jackie Peiffer's request. This temporary summer work was outside Jackie Peiffer's usual work duties and lasted only a brief period. Due to the COVID-19 pandemic, the employer did not need assistance with meals or cleaning during the summer break and those opportunities were not available.

#### **REASONING AND CONCLUSIONS OF LAW:**

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

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.

c. With respect to services for an educational institution *in any capacity* under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code r. 871-24.51(1) defines "educational institution" as follows:

Educational institution means public, nonprofit, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

Iowa Admin. Code r. 871-24.51(3)(b) defines "nonprofessional employees" as follows:

Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in instructional, research, or principal administrative capacity.

Iowa Admin. Code r. 871-24.51(6) defines "reasonable assurance" as follows:

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. 871-24.52(4) provides as follows:

Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However,

unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

*b.* The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph “e.”

Iowa Admin. Code r. 871-24.52(6) provides as follows:

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

Carroll-Kuemper is an “educational institution” affected by the between academic terms disqualification provision Iowa Code section 96.4(5)(d). The claimant was employed as a part-time nonprofessional employee during the 2019-2020 academic year and had reasonable assurance of employment in a similar capacity during the 2020-2021 academic year. Accordingly, the claimant was not eligible for benefits based on the Carroll-Kuemper wage credits between academic terms, effective the benefit week that began May 24, 2020 through the benefit week that ended August 22, 2020.

The claimant has both school-based and non-school-based base period wage credits. The non-school-based wages were insufficient, alone, to meet the minimum earnings requirements: wages of at least \$1,660 in one quarter and at least \$830 in a different quarter (program year July 7, 2019 - July 4, 2020). See 2019 unemployment Insurance Claimant Handbook. See also Iowa Code section 96.4(4) (regarding minimum earnings requirements). The claimant is not eligible for benefits for the period of May 24, 2020 through August 22, 2022.

**DECISION:**

The February 8, 2021 (reference 02) decision is affirmed. The claimant was not eligible for benefits based on the Carroll-Kuemper wage credits between academic terms, effective the benefit week that began May 24, 2020 through the benefit week that ended August 22, 2020. The claimant lacks sufficient non-school base period wages to be monetarily eligible for benefits based on the non-school wages. The claimant is not eligible for benefits for the period of May 24, 2020 through August 22, 2022.



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James E. Timberland  
Administrative Law Judge

September 23, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.