

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANE JOHANSON

Claimant

APPEAL 17A-UI-07029-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR FALLS COMM SCH DIST

Employer

OC: 05/28/17

Claimant: Appellant (1R)

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

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

Diane Johanson (claimant) filed an appeal from the July 3, 2017, reference 03, unemployment insurance decision that allowed benefits because, even though she has reasonable assurance with Cedar Falls Community School District (employer), as she is monetarily eligible based on wages earned with other non-educational employers. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2017. The claimant participated. The employer participated through Director of Human Resources Adrian Talbot and Human Resource Specialist Lori Bruns. No exhibits were offered or received. The notice of hearing did not include Iowa Code section 96.4(5) related to reasonable assurance, but the parties agreed to waive notice on that issue.

ISSUE:

Is the claimant able to and available for work effective May 28, 2017?

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a substitute teacher for the employer beginning February 27, 2015. She was hired to work on-call or as needed when work was available. She has reasonable assurance of continued work in the same position for the 2017-2018 school year.

The claimant has wage credits from employment with Blackhawk County and a Wisconsin employer for whom she worked in a teaching position. The claimant refused to provide the name of the Wisconsin employer. The claimant has separated from that employer. The claimant currently has no limits on her ability to or availability for work and continues to search for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does have reasonable assurance of returning to work the following academic term or year. The claimant has other wages in her base period which might make her eligible for benefits, if the wages are non-educational institution wages and she is otherwise eligible.

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(6) provides:

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

Iowa Code section 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".

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

(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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 between contracts or terms and during customary and established periods of holiday recesses 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.

The legislature has provided a specific rule that applies to substitute teachers holding that this category of worker, among others, is not considered to be unemployed within the meaning of the law when the only base period wage credits are related to "on-call" work. 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. Because the claimant was hired to work only on-call or as needed and she remains on the substitute list, she is not considered to be unemployed within the meaning of the law. Thus the claimant does have reasonable assurance of continued employment for the 2017-2018 school year.

However, because the claimant has other wages in her base period, benefits are allowed, based upon the other wages, if they are non-educational institution wages and provided she is otherwise eligible.

DECISION:

The July 3, 2017, reference 03, unemployment insurance decision is affirmed. The claimant does have reasonable assurance of returning to work the following academic year or term but is otherwise fully or partially unemployed and eligible for benefits, if the other wages in her base period are non-educational institution wages and she is otherwise eligible.

REMAND:

The issues of whether the claimant is eligible for benefits based on her separation from her teaching position with the Wisconsin employer and if the Wisconsin wages were paid by an education institution are remanded to the Benefits Bureau for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn