

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN D TABER

Claimant

APPEAL 21A-UI-02767-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMES COMMUNITY SCHOOL DIST

Employer

OC: 03/15/20

Claimant: Appellant (3)

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Admin. Code r. 871-24.52(10) – Substitute Teacher

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal of the January 6, 2021 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective May 31, 2020 because her employment occurred between academic years or terms. The parties were properly notified of the hearing. A telephone hearing was held on March 11, 2021. The claimant participated personally. The employer, Ames Community School District, participated through witness Kristin Johnson. Claimant's Exhibits A, B, C, D, E, and F were admitted. Employer's Exhibits 1 and 2 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-02762-DB-T; 21A-UI-02764-DB-T; 21A-UI-02770-DB-T; 21A-UI-02773-DB-T; and 21A-UI-02776-DB-T.

ISSUES:

Did the claimant have reasonable assurance?
Is the claimant a substitute teacher?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer in the Fall of 1998. She has worked as an on-call substitute teacher beginning on October 2, 2014 and continues to work for the employer in that same capacity. Claimant filed her original claim for unemployment insurance benefits effective March 15, 2020. Claimant's established weekly-benefit amount was \$180.00. Claimant filed an additional claim for benefits effective November 22, 2020. Claimant's administrative records establish that her base period included the following on-call wages with an educational institution:

	2018/4	2019/1	2019/2	2019/3
Ames Community School District	\$4,160.00	\$2,970.00	\$3,255.00	\$840.00

Claimant's administrative records establish that she filed weekly-continued claims for benefits for the following weeks and was paid the following amounts in regular unemployment insurance benefits:

Week-ending March 21, 2020	Paid \$180.00 in regular benefits
Week-ending March 28, 2020	Paid \$180.00 in regular benefits
Week-ending April 4, 2020	Paid \$180.00 in regular benefits
Week-ending April 11, 2020	Paid \$180.00 in regular benefits
Week-ending April 18, 2020	Paid \$180.00 in regular benefits
Week-ending April 25, 2020	Paid \$180.00 in regular benefits
Week-ending May 2, 2020	Paid \$180.00 in regular benefits
Week-ending May 9, 2020	Paid \$180.00 in regular benefits
Week-ending May 16, 2020	Paid \$180.00 in regular benefits
Week-ending May 23, 2020	Paid \$180.00 in regular benefits
Week-ending May 30, 2020	Paid \$180.00 in regular benefits
Week-ending June 6, 2020	Paid \$180.00 in regular benefits
Week-ending June 13, 2020	Paid \$180.00 in regular benefits
Week-ending June 20, 2020	Paid \$180.00 in regular benefits
Week-ending June 27, 2020	Paid \$180.00 in regular benefits
Week-ending July 4, 2020	Paid \$180.00 in regular benefits
Week-ending July 11, 2020	Paid \$180.00 in regular benefits
Week-ending July 18, 2020	Paid \$180.00 in regular benefits
Week-ending July 25, 2020	Paid \$180.00 in regular benefits
Week-ending August 1, 2020	Paid \$180.00 in regular benefits
Week-ending August 8, 2020	Paid \$141.67 in regular benefits
Week-ending August 15, 2020	Paid \$180.00 in PEUC benefits
Week-ending August 22, 2020	Paid \$180.00 in PEUC benefits
Week-ending August 29, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 5, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 12, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 19, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 26, 2020	Paid \$180.00 in PEUC benefits
Week-ending October 3, 2020	Paid \$180.00 in PEUC benefits
Week-ending November 21, 2020	Paid \$0.00
Week-ending November 28, 2020	Paid \$0.00
Week-ending December 5, 2020	Paid \$0.00

For the week-ending March 21, 2020, work was not available because the employer was on its customary spring break and the claimant had reasonable assurance to return after the customary break.

For the week-ending March 28, 2020 through the week-ending April 18, 2020, the school was completely closed during the COVID-19 pandemic and the claimant had no opportunity to work due to the closure.

The schools reopened in an online learning environment only for the remainder of the school year beginning the benefit week of April 19, 2020 through the end of the school year on June 2, 2020 (week-ending June 6, 2020). There were substitute teaching positions available while the school was operating in an online only learning environment, but the positions were limited due to the fact that regulations changed to allow a larger pool of participants to substitute teach and regular teachers could work from home.

Following the end of the 2019/2020 term, the claimant was sent an email communication that asked if she intended to be a substitute teacher for the 2020/2021 school year. Claimant completed that form and indicated that she did intend to continue to be a substitute teacher for the upcoming 2020/2021 school year. From the week of June 7, 2020 through the week-ending August 22, 2020, the school was shut down due to its regular summer closure between academic years or terms.

The 2020/2021 school year was scheduled to begin on or about August 24 – 26, 2020, depending on the school; however, the schools did not reopen until September 8, 2020 and did so in an online learning environment only. See Exhibit A. Therefore, for the week beginning August 23, 2020 through the week-ending September 5, 2020, the schools were completely closed and there was no work available for the claimant as a substitute teacher.

Schools began the 2020/2021 school year in an online learning environment from September 8, 2020 through the week-ending September 19, 2020. There was work available to substitute teachers but it was again limited due to regular teachers being able to teach from home and the pool of substitute teachers being expanded due to changed regulations.

Schools were open in person from the week beginning September 20, 2020 through November 10, 2020. However, claimant was ill effective September 21, 2020 and was required to quarantine due to COVID-19 like symptoms through the week-ending October 3, 2020, so she did work due to quarantine during that period of time.

Claimant returned to work as a substitute teacher effective the week beginning October 4, 2020 through November 10, 2020. She worked 24 days during this time period. See Exhibit A.

On or about November 11, 12, and 16, 2020, the employer again transitioned to an online only learning environment through December 9, 2020. There were substitute positions available; however, they were limited again due to regular teachers being able to work from home and other persons being able to substitute teach.

Schools transitioned back to in person learning on December 9, 2020. Claimant has worked substitute teaching assignments since December 9, 2020.

Claimant's administrative records establish that she was paid regular unemployment insurance benefits of \$3,741.67 from March 15, 2020 through August 8, 2020. Claimant was paid Lost Wages Assistance (LWA) benefits of \$1,800.00 from July 26, 2020 through September 5, 2020. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits of \$10,200.00 from March 29, 2020 through July 25, 2020. Claimant was paid Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$1,440.00 from August 9, 2020 through October 3, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(5) 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.**

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.

(emphasis added).

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. 871-24.52(6) provides:

(6) 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 non-school 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.

(emphasis added).

Iowa Admin. Code r. 871-24.22(2)i(1) and (2) provide in pertinent part:

Benefits 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.

(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....

(i) On-call workers.

(1) Substitute workers (i.e. post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(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.

(emphasis added).

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

Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2)"I"(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22"l"(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)"I"(3) if they are: (1) Able and available for work. (2) Making an earnest and active search for work each week. (3) Placing no restrictions on their employability. (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

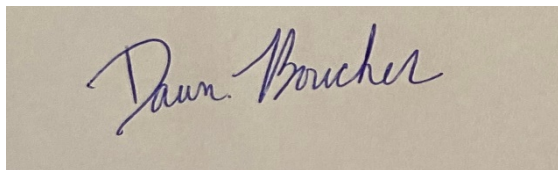
e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

In this case, the claimant filed for regular unemployment insurance benefits from March 15, 2020 through March 21, 2020 which was during the school's customary spring break period. Claimant does not work during customary break periods and she had reasonable assurance to return to work after the customary break period. As such, claimant was not eligible for regular unemployment insurance benefits funded by the State of Iowa from March 15, 2020 through March 21, 2020 due to reasonable assurance over spring break.

Claimant was notified to respond via email if she intended to continue as a substitute teacher for the 2020/2021 school year. She notified the employer that she intended to continue as a substitute teacher for the upcoming 2020/2021 school year. As such, the claimant did have reasonable assurance of employment for the 2020/2021 school year and she is not eligible for unemployment insurance benefits between academic years or terms (summer break). No other wages credits exist in the claimant's base period that are non-educational. Benefits are denied from the week beginning June 7, 2020 through the week-ending August 22, 2020 pursuant to Iowa Code § 96.4(5) as the claimant had reasonable assurance to return for the upcoming academic year or term.

DECISION:

The January 6, 2021 (reference 03) decision is modified in favor of respondent. The claimant is not considered unemployed and had reasonable assurance between academic years or terms and customary breaks. Regular unemployment insurance benefits are denied effective March 15, 2020 through March 21, 2020 due to reasonable assurance as the employer was on a customary break. Regular unemployment insurance benefits are denied from June 7, 2020 through August 22, 2020 due to reasonable assurance as the employer was between academic years or terms.



Dawn Boucher
Administrative Law Judge

March 31, 2021
Decision Dated and Mailed

db/kmj