

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**WHITNEY L BEER**

Claimant

**APPEAL 19A-UI-06578-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PANORAMA COMMUNITY SCHOOL**

Employer

**OC: 07/28/19**

**Claimant: Respondent (4R)**

Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal of the August 15, 2019 (reference 02) unemployment insurance decision that found claimant was eligible for unemployment benefits effective July 28, 2019 because she did not have reasonable assurance of employment for the following academic term. The parties were properly notified of the hearing. A telephone hearing was held on September 12, 2019. The claimant, Whitney L. Beer, did not participate. The employer, Panorama Community School, participated through witness Symantha Crawford. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact finding documents.

**ISSUE:**

Did the claimant have reasonable assurance of employment following a customary vacation or holiday recess?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a substitute para-educator. This employer is an educational institution. The last day claimant physical worked on the job was in April of 2019. The school year ended approximately June 2, 2019. On July 18, 2019, the employer mailed claimant a letter offering her the same substitute para-educator position that she had the previous year. The rate of pay increased from the previous year. Claimant did not respond to the letter. On August 8, 2019, an email was sent to claimant asking if she wanted to continue with the employer for the upcoming 2019-2020 school year and the claimant failed to respond to the employer's email.

Claimant filed an initial claim for unemployment insurance benefits with an effective date of July 28, 2019. Claimant's administrative records establish that she has other regular non-educational institution employment wage credits in the base period.

This issues of whether the claimant has permanently separated from employment with Panorama Community School (employer account no. 020530) and whether the claimant is monetarily eligible for benefits based upon other non-educational institution wage credits have not been the subject of an initial investigation and determination by the Benefits Bureau of Iowa Workforce Development.

## **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.

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(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.

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. 871-24.52(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).**

(emphasis added).

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of

suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee **shall be considered to have voluntarily quit employment.**

(emphasis added).

In this case, the claimant did have reasonable assurance of employment for the 2019 – 2020 school year when the employer offered her employment in the letter stating as such. Claimant cannot use the wage credits earned from Panorama Community School for the purposes of unemployment insurance benefit monetary eligibility. However, claimant has other non-educational institution wage credits in the base period and may be monetarily eligible for benefits based upon the wage credits in the base period earned with Genesis Development. Panorama Community School District will not be charged for benefits paid for weeks claimed between successive years or terms. Claimant may be monetarily eligible for benefits based upon her non-educational institution wage credits with Genesis Development.

**DECISION:**

The August 15, 2019 (reference 02) decision is modified in favor of the appellant. The claimant was given reasonable assurance of returning to work the following academic year or term. Panorama Community School District (employer account no. 020530) will not be charged for benefits paid for weeks claimed between successive years or terms. Claimant has other non-educational wages in her base period and may be monetarily eligible for benefits based on those wages alone.

**REMAND:**

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a redetermination of the monetary record to reflect the decision above, if necessary. This matter is also remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision regarding the separation from employment from Panorama Community School pursuant to Iowa Admin. Code r. 871-24.52(10)e.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn