

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARISSA MELSSEN**  
Claimant

**APPEAL 21A-UI-04371-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE HOLY FAMILY CATHOLIC**  
Employer

**OC: 04/05/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

On February 1, 2021, the employer, Dubuque-Holy Family Catholic, filed an appeal on behalf of claimant Marisa Melssen from the January 20, 2021 (reference 02) unemployment insurance decision that denied benefits effective April 5, 2020, based upon a determination that had reasonable assurance of continued employment. The parties were properly notified of the hearing. A telephonic hearing was scheduled for 10:05 a.m. on Friday, April 9, 2021. Prior to the hearing being held, the administrative law judge was able to resolve the issue in claimant's favor with no prejudice to the employer without testimony.

**ISSUE:**

Did claimant have reasonable assurance of continued employment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was a year-round employee for the employer.

On March 15, 2020, Governor Kim Reynolds issued a proclamation closing all K-12 schools in Iowa due to the COVID-19 pandemic.

Beginning the week of April 11, 2020, claimant began filing weekly continued claims for benefits due to less work with the employer because of the pandemic. The school was closed due to the governor's proclamation, and there was limited work available for claimant.

Claimant has received benefits for the weeks ending April 18, April 25, May 2, May 16, and May 30, 2020. For all other weeks she filed, claimant reported wages in excess of her weekly benefit amount plus fifteen dollars and she received no benefits.

Claimant is listed as Group Code 8, which currently indicates that she is unemployed because of the pandemic. Under this group code, claimant is still attached to the employer but is not able to work due to the pandemic, and the employer is relieved of any charges.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is eligible for benefits. The underlying decision is reversed.

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.

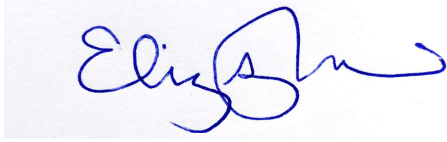
Iowa Admin. Code r. 871-24.52(9) provides in part:

(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.

In this case, claimant was a year-round employee who did not receive a letter of the assurance from the employer at the end of every school year. She filed for benefits when she was laid off due to the pandemic and she properly received benefits for the weeks during which she was unemployed.

**DECISION:**

The January 20, 2021 (reference 02) unemployment insurance decision is reversed. The claimant did not have reasonable assurance of returning to work, as she was a year-round employee. Benefits are allowed, provided she is otherwise eligible.



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Elizabeth A. Johnson  
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April 13, 2021  
Decision Dated and Mailed

lj/kmj