

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL R WOLFE**  
Claimant

**SIOUX CITY COMMUNITY SCHOOL DIST**  
Employer

**APPEAL 21A-UI-06028-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4(5) – Reasonable Assurance  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On February 27, 2021, Michael R. Wolfe (claimant) filed an appeal from the July 28, 2020, reference 01, unemployment insurance decision denied benefits based on the determination he had reasonable assurance of continued employment the following school year with Sioux City Community School District (employer). After due notice was issued, a telephone hearing was held on May 4, 2021, and was consolidated with the hearing for appeal 21A-06029-SC-T. The claimant participated. The employer participated through Stefanie Verros, Assistant Director of Human Resources. The Department's Exhibits D1 and D2 were admitted into the record.

**ISSUES:**

Is the claimant's appeal timely?

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked for the employer during the 2019-2020 school year, as a full-time bus driver. Normally, the employer would notify employees at the end of the school year if they were going to maintain employment the following school year. However, due to COVID-19, the employer was unable to tell the claimant by the end of the school year whether his employment would continue. The claimant filed his claim for unemployment insurance benefits effective May 31, 2020. He claimed benefits each week through the week ending August 1. In the last week of July, the employer mailed him a notice of employment for the 2020-2021 school year.

The unemployment insurance decision denying benefits was mailed to the claimant's address of record on July 28, 2020. He did not receive the decision. The first notice of disqualification was the overpayment decision dated February 23, 2021. The appeal was sent within ten days after receipt of that decision.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely, and he did not have reasonable assurance of returning to work the following academic term or year until August 2, 2020. Benefits are allowed from May 31 through August 1, 2020.

### *I. Is the claimant's appeal timely?*

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The

claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

*II. Did the claimant have reasonable assurance of continued employment in the next school term or year?*

Iowa Code section 96.4(5)b and c provide:

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:

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.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

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.

In this case, the claimant did not have reasonable assurance of continued employment for the 2020-2021 school year until August 2. Therefore, he is eligible for benefits from May 31 through August 1. Benefits are allowed.

**DECISION:**

The claimant's appeal is timely. The July 28, 2020, reference 01, unemployment insurance decision is reversed. The claimant did not have reasonable assurance of returning to work the following academic year or term until August 2, 2020. Benefits are allowed from May 31 through August 1, 2020.



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Stephanie R. Callahan  
Administrative Law Judge

May 17, 2021  
Decision Dated and Mailed

src/scn