

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**THOMAS L DRILLING**  
Claimant

**UNITED COMMUNITY SCHOOL DIST**  
Employer

**APPEAL 17A-UI-07328-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/18/17  
Claimant: Appellant (2R)**

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Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 12, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 7, 2017. The claimant participated and testified. The employer participated through Superintendent Tim Salmon. Claimant's Exhibits A through E were received into evidence.

**ISSUE:**

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: Claimant was hired by the school district as a part-time bus driver for the 2016-2017 school year beginning August 22, 2017. Claimant's contract for the 2016-2017 school year ended on May 26, 2017. Claimant was not offered a new contract at this time, nor were any discussions held about the 2017-2018 school year. The employer testified it generally sends out the contracts for its bus drivers in July. On July 17, 2017, the employer received notice that claimant had filed paperwork to begin drawing on his IPERS account. Contracts for bus drivers were sent out approximately one week later. Claimant's position with the school district is also an IPERS covered position, meaning, if he draws on his IPERS account, he is ineligible to work in his position with the school district for a six-month period. Claimant was not sent a contract, as his decision to draw on his IPERS account made him ineligible for the position. During the hearing claimant testified had he been offered a contract, he would have declined to work for this employer again. Claimant has no other regular non-educational institution employment wage credits in the base period.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant does not have reasonable assurance of returning to work the following academic term or year.

Iowa Code section 96.4(5) provides, in relevant part:

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.

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. 871-24.51(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.** (Emphasis added.)

In this case, the claimant does not have reasonable assurance of continued employment for the 2017-2018 school year. While the regulation allows for a written, verbal or implied agreement, it also requires some form of notification of continued employment the following year to constitute reasonable assurance. Iowa Admin. Code r. 871-24.51(6). The employer has not notified the claimant he will have continued employment the 2017-2018 school year. As the claimant does not have reasonable assurance, he is considered laid off or separated from his regular employment until such time as he is recalled to work. Information was provided during the hearing that indicates claimant has since separated from the employer. That issue must be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The July 12, 2017, reference 02, unemployment insurance decision is reversed. The claimant does not have reasonable assurance of returning to work the following academic year or term and is currently unemployed. Benefits are allowed, provided claimant is otherwise eligible.

**REMAND:**

The issue of claimant's separation from this employer is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs