

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

PATRICIA J BISHOP
Claimant

APPEAL NO. 09A-UI-11032-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OTTUMWA COMMUNITY
SCHOOL DISTRICT**
Employer

OC: 06/07/09
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 22, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 18, 2009. Claimant participated. Employer participated through Delores Allman.

ISSUE:

The issue is whether claimant has reasonable assurance of continued employment during the next school year or term.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed as a substitute teacher associate for the Ottumwa Community School District during the 2008 – 2009 school year. She remains on the substitute list for the 2009-2010 school year. She does not have nonschool wage credits in the base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does have reasonable assurance of returning to work the following academic year.

871 IAC 24.22(2)i(1) provides:

Benefit 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.

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.

871 IAC 24.22(2)i(3) provides:

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.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code § 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

871 IAC 24.52(6) provides:

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 nonschool 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.

871 IAC 24.52(10) states: 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)"(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(2)"(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)"(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).

The claimant does have reasonable assurance of continued employment for the 2009-2010 school year. As a result, the claimant is not considered unemployed.

DECISION:

The July 22, 2009, reference 01, decision is affirmed. The claimant does have reasonable assurance of returning to work the following academic year. Benefits must be denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs