

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARRELL W DOSS

Claimant

HAWKEYE COMMUNITY COLLEGE

Employer

APPEAL 21A-UI-07287-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/19

Claimant: Appellant (5R)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant/appellant, Darrell W. Doss, filed an appeal from the March 2, 2021 (reference 06) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits effective November 22, 2020, concluding claimant had reasonable assurance. The parties were properly notified about the hearing. A telephone hearing was held on May 20, 2021. The claimant participated. Teri Schmitz, attorney at law, represented claimant. Lynn Duit represented the employer.

The administrative law judge took official notice of the administrative records, including wage history. Claimant Exhibits A, B, and C were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established his claim for unemployment insurance benefits with an effective date of December 22, 2019. Claimant has been allowed Pandemic Unemployment Assistance Benefits effective November 15, 2020.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed part-time as a non-credit truck driving instructor. His hours and classes vary based upon the enrollment of students and selections of classes from the employer. Because of the nature of non-credit classes, they do not run concurrently with the academic school year, in terms of quarters or semesters. Claimant’s schedule is not subject to customary breaks and recesses between terms. The lengths of courses vary depending what is being taught and claimant’s hours have fluctuated based upon employer needs. The claimant often receives short notice to teach since the classes are based upon enrollment and other factors outside of his control.

During the month of November 2020, claimant's hours varied each week. Claimant continued to perform work December 1-15, 2020, for a total of 31.75 hours. Claimant did not perform any work December 16, 2020 through January 14, 2021. Claimant does not receive a customary letter of assurance or assignment each term or year for guaranteed employment.

Claimant filed his claim based upon a reduction of hours due to COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge modifies the decision with no change in effect.

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.

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.

Based on the evidence presented, the administrative law judge concludes the issue of reasonable assurance is moot as claimant is a year-round employee without customary breaks between academic years or terms. The nature of claimant's job as a non-credit teacher is that his scheduling does not run with the academic school year, with quarters, semesters, terms or customary breaks. Claimant's position is dependent on whether students sign up, much like an adjunct professor, who awaits notice from a school that there are sufficient students to teach for each class.

However, unlike an adjunct professor who would teach during the academic term, sometimes claimant's classes are scheduled when the academic/credited classes are also running and sometimes he does not. He knows the classes he teaches can vary in length and scheduled as needed. Accordingly, he would not be subject to customary breaks or recesses as other school employees.

The real issue at hand is whether claimant has been totally, partially or temporarily employed any week since filing his claims for benefits with an effective date of November 22, 2020, or whether he as a part-time employee is working under the same hours/wages for which he was hired. This issue is remanded to the Benefits Bureau for an initial investigation.

DECISION:

The March 2, 2021 (reference 06) unemployment insurance decision is modified with no change in effect. The issue of reasonable assurance is moot as claimant is a year-round employee.

REMAND: The issues of whether claimant is totally, partially or temporarily unemployed and whether claimant is still working under the same conditions/hours for which he was hired are remanded to the Benefits Bureau for an initial investigation.



Jennifer L. Beckman
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June 17, 2021
Decision Dated and Mailed

jlb/ol