

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA J LOERZEL

Claimant

APPEAL 21A-UI-04562-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOONE SACRED HEART

Employer

OC: 03/15/20

Claimant: Appellant (4)

Iowa Code § 96.4(5) – Reasonable Assurance

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On February 3, 2021, the claimant, Kayla J. Loerzel, filed an appeal from the January 20, 2021 (reference 03) unemployment insurance decision that denied effective March 22, 2020, based upon a determination that claimant had reasonable assurance of continued employment. The employer also appealed this decision on January 29, 2021, on claimant's behalf. The parties were properly notified of the hearing. A telephonic hearing was held on Friday, April 9, 2021. The claimant, Kayla J. Loerzel, participated. The employer, Boone—Sacred Heart, participated through witness Sue Eldridge, Principal; and hearing representative Paul Jahnke represented the employer. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record, including the record of claimant's weekly continued claims for benefits and claimant's appeal letter.

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 began her employment with the employer on August 20, 2018. Claimant worked full-time hours, splitting her time between a position as a part-time kitchen employee and a part-time after-school care employee. Claimant separated from employment in August 2020.

On March 15, 2020, Governor Kim Reynolds issued a proclamation closing all K-12 schools in Iowa due to the COVID-19 pandemic. The employer was scheduled to be closed that week due to spring break. Claimant was not scheduled for and did not work any hours that week.

Beginning the week of March 21, 2020, claimant was laid off due to a lack of work with the employer. The school was closed due to the governor's proclamation, and there was no work available for claimant.

The employer sent claimant and other employees letters of assurance in mid-April 2020, regarding employment for the 2020-21 academic year. Claimant was informed that she would have a position with the employer for the coming academic year. Claimant responded to this letter indicating she would accept this position.

The school year was scheduled to end on May 28, 2020. At that point, the employer would have had no additional work for claimant.

Claimant continued to file weekly continued claims for unemployment insurance benefits through the summer of 2020. Claimant admits that she has never filed for benefits during the summer in the past while employed with this employer, and she does not typically work for another employer during the summer.

Sometime in August, claimant told the employer that she would not be returning for the new academic year. At that point, she stopped filing for 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.

A disqualification decision was mailed to claimant's last known address of record on January 20, 2021. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 30, 2021. The appeal was not filed until February 3, 2021, which is after the date noticed on the disqualification decision. Claimant wrote in her appeal letter: "I was out of town and just received the 3 letters in the mail."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is eligible for benefits from March 22, 2020, through the week ending May 30, 2020. Thereafter, claimant had reasonable assurance and benefits are denied. The underlying decision is modified in favor of claimant.

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 laid off due to a lack of work with the employer from March 22, 2020, through May 30, 2020. This layoff was due to the COVID-19 pandemic. She is eligible for benefits for those weeks.

Effective May 31, 2020, claimant had reasonable assurance that her employment would continue following the employer's established and customary summer vacation period. Claimant has no other non-educational institution wage credits in the base period. As such, benefits are denied.

DECISION:

The January 20, 2021 (reference 03) unemployment insurance decision is modified in favor of claimant/appellant.

The claimant was laid off due to a lack of work from March 22, 2020, through May 30, 2020, and benefits are allowed for those weeks.

The claimant did have reasonable assurance of returning to work following the established and customary summer vacation period. Benefits are denied effective May 31, 2020.

REMAND:

The issues of claimant's separation from employment and whether claimant has been overpaid benefits are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.



Elizabeth A. Johnson
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April 14, 2021
Decision Dated and Mailed

lj/ol