

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEISLAVA S STOYCHEVA

Claimant

APPEAL 16A-UI-06029-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE COMMUNITY COLLEGE

Employer

OC: 05/08/16

Claimant: Respondent (2R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The employer filed an appeal from the May 27, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 27, 2016. The claimant did not register for the hearing and did not participate. The employer participated by way of John Clopton, executive director of human resources services. Pam Hickman also testified for the employer. Department exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records, including the fact-finding documents. Based on the evidence, the argument presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant have reasonable assurance of continued employment in the next school term?

Is the claimant partially unemployed, effective May 8, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed part-time as an adjunct instructor with Hawkeye Community College since the spring of 2014. The claimant has never worked during the summer term. For

the spring 2014 semester, the claimant taught three courses, and for the fall 2014 semester, she taught two courses. The claimant taught two courses in spring 2015 and zero classes in fall 2015. The claimant taught two courses in spring 2016.

Full-time faculty teach 15 credits/units per semester. The employer policy provides that adjunct instructors have no expectation of ongoing employment and course loads may change depending on enrollment. Adjunct faculty are restricted in the amount of time they may work for the college to working less than half-time. The employer does not extend a teaching contract until the employer knows how many students are enrolled, and if there are not enough students, she will not be offered a class to teach. However, In March 2016, the claimant was offered a position by the dean to teach psychology in fall 2016, (which begins August 22, 2016) and she declined. The employer is unsure if the claimant intends to return in spring 2017 or if she has quit the employment through her declining of the fall 2016 class.

The claimant has no other regular education or non-educational institution employment wage credits in the base period. The claimant established a claim for benefits during the week of May 8, 2016.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.4-5-a 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 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.

871 IAC 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 other non-educational institution wage credits in the base period and did have reasonable assurance of continued employment for the fall term as evidenced by the March 2016 offer extended to her. As a result, the claimant is not considered unemployed. Because the only base period wage credits are related to adjunct teaching work, the implied understanding is that the claimant will only work during terms when work is available and that work will not be available between terms. Because claimant was hired to work as an adjunct instructor and has worked regularly during each school term for over two years with this employer, she is not considered to be unemployed or partially unemployed between academic terms, even when teaching and earning less during the summer term. Accordingly, benefits are denied. If there is a term when work is not available to her or the employer withdraws the course offering, that status may be reconsidered.

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

Iowa Code § 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The claimant is not considered a substitute worker/teacher or an "on-call" employee or pursuant to Iowa Admin. Code r. 871-24.22(2)i(1),(3). Substitute work indicates the worker is filling in at the behest of the employer for another worker who is unable to work, for whatever reason. On-call employment implies that the employee, such as a banquet or event worker, is called to work when sporadic work is available. In the case at hand, the claimant was hired to work as an adjunct instructor and has consistently worked each term. As adjunct faculty, she is limited by the policy terms to half of the full-time faculty's hours per semester. This evinces part-time employment. Even with that status, the claimant is not considered unemployed since the employer has consistently provided her with regular part-time employment as shown by her wages. Teachers at any level of education understand, as a general if not universal proposition, that there are fewer instructional hours at certain times of the year, primarily during summer

terms. Because the claimant does not have any full-time base period educational credits or full-time wages with this or any other employer and the level of employment is consistent with his base period wage history with this employer, she may not be considered partially unemployed since May 8, 2016. Benefits are denied.

REMAND:

The issue of whether the claimant failed to accept a suitable offer of work based on the March 2016 offer to teach in fall 2016 delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REMAND:

The issue of whether a permanent separation has occurred delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REMAND:

The issue of whether the claimant has been overpaid benefits delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The May 27, 2016 (reference 01) decision is reversed. The claimant did have reasonable assurance of returning to work the following academic term. Benefits are denied. Further, the claimant is not considered partially unemployed. Benefits are denied. The issues of work refusal, whether a permanent separation has occurred, and whether the claimant has been overpaid benefits delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs