

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**ALEXIA K ARTHURS**

Claimant

**APPEAL 22A-UI-12335-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 05/10/20**

**Claimant: Appellant (5)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

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

Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On May 12, 2022, Alexia K. Arthurs (claimant) filed an appeal from the February 10, 2021, reference 01, unemployment insurance decision that denied benefits effective May 10, 2020, based upon the determination they had reasonable assurance of continuing employment with The University of Iowa (employer). After due notice was issued, a telephone hearing was held on June 29, 2022, and consolidated with the hearing for appeal 22A-UI-12336-SC-T. The claimant participated personally. The employer participated through Scott Coons. The department's Exhibits D1 and D2 and the claimant's Exhibits A through C were admitted into the record.

**ISSUES:**

Is the appeal timely?

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

Is the claimant totally, partially, or temporarily unemployed?

Is the claimant able to and available for work effective May 10, 2020?

Is the employer's account subject to charge?

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer as an as-needed adjunct professor 2013. They taught classes in the fall semester of the 2019-2020 school year. However, the claimant did not work for the employer in the spring semester of 2020.

The claimant did teach a short two-week class in the beginning of July 2020 for the employer. At the end of July, the employer offered the claimant a teaching position for the fall of the 2020-2021 school year. The claimant accepted the position on or about August 21, 2020.

The claimant also had two fellowships with other schools over the summer of 2020. Due to the pandemic, the fellowships were cancelled, and the claimant did not have work. The claimant continued searching for a full-time teaching position while she was unemployed.

The claimant filed for benefits effective May 10, 2020, and the base period includes wages earned in the 2019 calendar year. The employer is the only employer in the base period and the wages varied greatly by quarter from \$500.00 in wages paid the second quarter to \$10,800.00 paid in the fourth quarter. The claimant stopped filing for benefits the week ending July 25, 2020, and did report wages earned during the two weeks in July in which she worked for the employer.

The unemployment insurance decision was mailed to the claimant's address of record on February 10, 2021. They had moved to Maine for employment and asked to have their mail forwarded by the United States Postal Service (USPS). The claimant never received the decision. The first notice of disqualification was the overpayment decision dated May 2, 2022. The appeal was sent within ten days after that decision.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is timely, they did not have reasonable assurance, but they were still employed at the same hours and wages as contemplated in the contract of hire and are not able to and available for work. Benefits are denied.

### *1. Is the appeal timely?*

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any

disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received due to an error of the USPS. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

*II. Did the claimant have reasonable assurance of continued employment in the next school term or year?*

Iowa Code section 96.4(5)a and c provide:

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.

...

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. [Emphasis added.]

Iowa Admin. Code r. 871-24.52, provides in relevant part:

Determining eligibility claims after employer protest.

...

(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.

The U.S. DOL issued Program Letter No. 5-17 on December 22, 2016, that sets out guidance for the department interpretation of the Federal Unemployment Tax Act (FUTA) as it applies to institutions of higher education and part-time, adjunct or contingent faculty. It sets out three factors required for a reasonable assurance determination. First, a genuine offer of employment from a person with authority may be written, oral or implied. Second, the employment offered must be in the same capacity (e.g. professional or non-professional) as held in the previous term. Third, the economic conditions offered may not be "considerably less" than in the prior term. The letter defined "considerably less" as not earning at least 90 percent of the amount earned in the earlier academic year or term. It goes on to examine

whether contingencies within the offer are within the employer's control as a means to determine if the claimant has reasonable assurance of continued employment. Circumstances such as enrollment, funding and seniority are not considered to be within the employer's control. The letter requires analysis of the "totality of circumstances" to determine whether it is "highly probable" that there is a job available for claimant the following academic term. It also requires weight be given to the contingency of the offer and if it is "highly probable" that the contingency will be met. [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=8999](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8999)

The claimant and employer disagree as to when the claimant was offered the position in the fall 2020 semester. However, that issue of fact is moot. Reasonable assurance only applies if the claimant worked the normal time before the scheduled break. In this case, the claimant was not employed with the employer in the Spring 2020 semester, the term right before the customary break. Therefore, the claimant cannot be disqualified from benefits on the basis of reasonable assurance.

*III. Is the claimant totally, partially, or temporarily unemployed? Is the claimant able to and available for work effective May 10, 2020?*

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 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 either of the following apply:

(1) 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.

(2) 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.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.1A(37). Total and temporary unemployment occur when an individual does not work or earn wages in any given week. However, temporary employment occurs when the employer does not have work for the claimant and the unemployment lasts for fewer than four consecutive weeks. Partial unemployment occurs when a person works and earns wages less than their weekly benefit amount plus fifteen dollars.

The claimant was hired to work part-time on an as-needed basis with the employer and was never guaranteed any hours. The claimant and employer have maintained an ongoing employment relationship as evidenced by the summer and fall 2020 teaching positions. The claimant has elected to maintain this type of employment due to the time dedicated to self-employment publishing academic articles. This employer is the only employer in the base period. The claimant remained employed in the same manner as the contract of hire with the employer and cannot be considered unemployed. Benefits are denied.

**DECISION:**

The claimant's appeal is timely. The February 10, 2021, reference 01, unemployment insurance decision is modified with no change in effect. As the claimant did not work the semester before the customary break, they cannot be disqualified on grounds of reasonable assurance. However, the claimant is still employed in a part-time on-call position with the employer and cannot be considered unemployed. Benefits are denied.



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Stephanie R. Callahan  
Administrative Law Judge

August 16, 2022  
Decision Dated and Mailed

src/mh

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.



**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.