

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SARA E HALBUR**  
Claimant

**CARROLL-KUEMPER**  
Employer

**APPEAL 21A-UI-05896-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours  
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.7(2)a(2) – Employer Chargeability  
Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

The claimant/appellant, Sara E. Halbur, filed an appeal from the February 16, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits effective May 31, 2020. The parties were properly notified about the hearing. A first hearing was scheduled but not conducted on May 4, 2021. The hearing was rescheduled to allow both parties to review proposed exhibits.

After proper notice, a telephone hearing was held on June 11, 2021. The claimant participated personally and was represented by Scott Halbur, attorney at law. The employer was represented by Paul Jahnke, hearing representative. Kris Collinson, business manager, testified for the employer. Employer Exhibits A-T and Claimant Exhibits 1-50 were admitted into evidence. The administrative law judge took official notice of the administrative records, including wage history. 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:**

The issue is whether the claimant is between successive terms with an educational institution and had reasonable assurance of employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established her claim for unemployment insurance benefits with an effective date of March 15, 2020. Claimant began her employment November 13, 2017 and most recently worked as a full-time teacher associate.

On March 16, 2020, Governor Reynolds issued a proclamation closing K-12 school statewide due to the emerging COVID-19 pandemic. Claimant was unemployed due to the pandemic-related shutdown from March 15, 2020, through the week ending May 30, 2020, at which time her work for the school year would have ended otherwise. The issue of claimant's eligibility from March 15, 2020 through May 30, 2020 has been addressed in the reference 02 initial decision and benefits were allowed.

Claimant does not work summers for this employer. (She has other summer employment with the City of Carroll as a seasonal swim coach.)

On May 7, 2021, the employer issued a letter from its president to claimant stating it planned to offer her employment for the coming school year (Employer Exhibit I). The employer notified claimant that it expected to recall her for the coming 2020-21 school year in a similar capacity as she had been employed for the prior year. Claimant denied receipt of the letter. However, a review of the evidence reflects claimant was in contact frequently with the employer about other work related matters and school related matters as her children also attended the school (Claimant Exhibits 32-29, Employer Exhibits C, D).

Claimant opined even if the letter had been received she had no assurance of employment for the fall because she did not believe she would be recalled back to work unless classes were in-person (based upon her experience with the 2020 closure due to Governor Reynolds' proclamation). Claimant also asserted that the terms of her contract had substantially changed because she was listed as a ".876 full-time employee (FTE)" and not "1.0 FTE" as she believed she had been in prior years. A review of wages paid to the claimant between March-May 2020 through the Paycheck Protection Plan (PPP) show claimant being paid for 35 hours per week (Employer Exhibits G, H).

Claimant injured her knee and had surgery on July 30, 2020 (Employer Exhibit L). Claimant did not return to the school when fall term resumed in August 2020 due to her surgery.

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

For the reasons that follow, the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits effective May 31, 2020.

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 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 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.

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.

A claimant who works for an educational institution is not eligible to receive benefits during the period between two successive academic years or terms when the claimant performs services in the first of such academic years or terms and has reasonable assurance that she will perform services for the second of such academic years or terms. Iowa Code §96.4(5)b.. The claimant is employed by an educational institution. The claimant worked for the spring semester in 2020 (or was compensated as though she had performed work). The employer notified claimant via letter on May 7, 2020 that she had a position to return to in the fall 2020 semester as full-time teaching associate.

Cognizant of claimant's argument that the terms of the May 7, 2020 letter were not identical to a prior school year, the credible evidence also supports that claimant was compensated as an

employee working 35 hours per week, which is not the same as a full-time 1.0 FTE employee claimant argued she had been. When evaluating whether claimant's potential 12% reduction is "substantially less in economic terms and conditions", the administrative law judge would note that 25-30% reduction in pay would be considered a "substantial change in contract". *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). Based on the evidence presented, the administrative law judge concludes the terms contained are in a similar or same capacity which is not substantially less in economic terms or conditions.

The claimant had reasonable assurance that her employment would continue following the employer's established and customary vacation period. The claimant does not appear to have sufficient non-educational institution wage credits in the base period which would make her monetarily eligible to receive unemployment benefits if wages with this employer were excluded. As such, benefits are denied effective May 31, 2020.

**DECISION:**

The February 16, 2021 (reference 03) unemployment insurance decision is AFFIRMED. Claimant had reasonable assurance of returning to work the following academic year or term; benefits are denied effective May 31, 2020.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

June 28, 2021  
Decision Dated and Mailed

jlb/scn

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

**ATTENTION:** On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>