

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MILISA A SWANSON**  
Claimant

**APPEAL 16A-UI-07694-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACK HAWK COUNTY**  
Employer

**OC: 06/05/16**  
**Claimant: Respondent (4)**

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Iowa Code § 96.4(5) – Reasonable Assurance  
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(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2)f – Part-Time Worker – Able and Available

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 8, 2016, (reference 04) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on August 1, 2016. Claimant participated. Employer participated through human resource director Audra Heineman. Employer's Exhibit 1 was received.

**ISSUES:**

Does claimant have reasonable assurance of continued employment in the next school term or year?  
Is the claimant partially unemployed and available for work, and if so, is the employer's account liable for potential charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part-time as a school health assistant and began employment on April 1, 2016. The school year ended for the summer on June 6, 2016. No work is available for this position over the summer but claimant has been given reasonable assurance of continued employment for the 2016 – 2017 school year. (Employer's Exhibit 1) The employer reported to IWD claimant's wages for the second quarter of 2016 on August 2, 2016.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not laid off due to a lack of work and does have reasonable assurance of returning to work the following academic term or year but has other non-educational wages in the base period history.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The end of the school year without historical work during the summer is not considered a layoff due to a lack of work. Thus the issue of reasonable assurance applies.

Iowa Code § 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. 871-24.52(6) provides:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.52(13) provides:

Continuing supplemental (part-time) school employment after loss of nonschool employment. All employers, including employers of part-time workers are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer account, *whether contributory or reimbursable*, pursuant to Iowa Code section 96.7(3)“a”(2). (Emphasis added.)

In this case, the claimant does have other non-educational institution wage credits in the base period. The claimant does have reasonable assurance of continued part-time employment for the 2016 - 2017 school year but is otherwise monetarily eligible according to base period wages. Because the employer is providing work as contemplated at hire, it may request removal of any relevant charges.

Iowa Admin. Code r. 871-24.2 provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

...

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. The claims taker will then assign a group code to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. The group codes are:

...

(3) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer." This group pertains only to those individuals who worked full-time and will again work full-time if the individual's employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group "1," "2," "5" or "6."

Claimant is expected to search for work while claiming benefits as this is not a temporary lay off. While it may be difficult to find summer-only employment, the work search is a method by which claimant may find full-time or better employment, rather than holding herself out for part-time, school-year only employment.

#### **DECISION:**

The July 8, 2016, (reference 04) decision is modified in favor of the appellant. The claimant does have reasonable assurance of returning to work the following academic year or term but has other wages in the base period. Benefits are allowed, based upon other non-educational insured wages in the base period. That may involve a redetermination of maximum and weekly benefit amounts. Claimant is expected to search for work while claiming benefits. The employer may request removal of any relevant charges.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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