

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ANTHONY J SAN
Claimant

APPEAL NO. 20A-UI-10711-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES INC COMMUNITY SCH DIST
Employer

OC: 03/08/20
Claimant: Respondent (2R)

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 28, 2020, reference 01, decision that allowed benefits effective July 12, 2020, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant had not been offered employment for the next academic year or term and lacked reasonable assurance of employment in the following academic year or term. After due notice was issued, a hearing was held on October 20, 2020. The claimant did not provide a telephone number for the appeal hearing and did not participate. Rhonda Wagoner represented the employer and presented additional testimony through Bobbie Jo Sheridan. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant is disqualified for unemployment insurance benefits for the period beginning July 12, 2020 based on the between academic terms disqualification set forth at Iowa Code section 96.4(5).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 8, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$250.00. The Des Moines Independent Community School District is the sole base period employer. The claimant did not commence making weekly claims until June 30, 2020. At that time, the claimant made a single weekly claim for the week that ended March 14, 2020, reported wages that exceeded his weekly benefit amount by more than \$15.00 and did not receive any benefits for that week. The claimant established an additional claim for benefits that was effective July 12, 2020, but again did not immediately commence making weekly claims. Instead, the claimant reactivated his claim for benefits effective July 19, 2020. On July 29, 2020, the claimant attempted to make weekly claims for each of the weeks between March 15, 2020 through July 25, 2020. Given the untimely nature of most of the weekly claims, Iowa Workforce Development recognized only the weekly claims for the period beginning July 19, 2020. The

claimant made weekly claims for the six weeks between July 19, 2020 and August 29, 2020. The claimant received \$250.00 in regular benefits for each of those weeks. The claimant received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the week that ended July 25, 2020. The claimant received \$1,500.00 in Lost Wages Assistance (LWA) for the five weeks between July 26, 2020 and August 29, 2020.

The claimant was employed as a part-time Enrichment Coach for the Des Moines Independent Community School District's before and after-school program. The duties were primarily childcare in nature, but had an instructional aspect. The claimant began his employment in 2015 and last performed work for the District on March 13, 2020. At that time, Des Moines schools closed for in-person instruction for the remainder of the school year to prevent community spread of COVID-19. The 2019-2020 school year ended on May 29, 2020. The employer paid the claimant his regular wages through the end of the school year. At that point, the employer had no more work for the claimant until the start of the 2020-2021 academic year that began on September 7, 2020. The claimant was an academic year employee, but was given the opportunity during previous summer breaks to assist with the summer enrichment program. The employer substantially pared back that summer enrichment program during the 2020 summer break due to COVID-19 and did not need the claimant's assistance with that program.

The claimant's supervisor had been in contact with the claimant on a weekly basis throughout the summer. Based on that contact and course of conduct in prior years, the claimant knew at all relevant times that the employer would have the same or similar work for him during the next academic year. This was evident in text messaging between the supervisor and the claimant on August 7, 2020, when the supervisor asked the claimant whether he had made a decision about returning at the start of the academic year. In that text message discussion, the claimant declined further employment in the new academic year.

REASONING AND CONCLUSIONS OF LAW:

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

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.

871 IAC 24.52(4) provides as follows:

Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph "e."

871 IAC 24.52(6) provides as follows:

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 section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

The claimant is disqualified for benefits during the period of May 30, 2020 through September 6, 2020, the period between the end of the 2019-2020 academic year and the start of the 2020-2021 academic year. The Des Moines Independent Community School District is an "educational institution" for purposes of Iowa Code section 96.4(5)(d). The claimant was a nonprofessional employee who performed services for the employer during the 2019-2020 academic year until March 2020 and who received his regular wages through the end of that academic year. The claimant and his supervisor had a mutual understanding that the claimant would be welcomed back to perform the same duties in the new school year under the conditions that would remain the same except for the pay, which would increase. The weight of the evidence indicates that this mutual understanding was in place at the time the claimant established the additional claim for benefits that was effective July 12, 2020.

DECISION:

The August 28, 2020, reference 01, decision is reversed. The claimant is disqualified for benefits for the period of July 12, 2020 through September 6, 2020, based on the between academic terms disqualification provisions of Iowa Code section 96.4(5). The employer's account shall not be charged for benefits for that period.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular, FPUC and LWA benefits the claimant received for the period of July 19, 2020 through August 29, 2020.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**



James E. Timberland
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

jet/scn