

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARK A KOPRIVA**  
Claimant

**JOHNSTON COMMUNITY SCHOOL  
DISTRICT**  
Employer

**APPEAL 21A-UI-24720-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/07/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

On November 9, 2021, claimant/appellant filed an appeal from the January 20, 2021, reference 01, unemployment insurance decision that denied benefits based on the determination he was not eligible for unemployment benefits between successive academic years. After due notice was issued, a telephone hearing was held on January 5, 2022. The claimant participated. The employer did not call in to testify. Administrative notice was taken of claimant's unemployment insurance benefits records.

**ISSUE:**

Is claimant's appeal timely?

Is the claimant eligible for benefits between academic years?

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on January 7, 2021. The appellant did not receive the decision. Claimant receive correspondence in August 2021 regarding his June 6, 2021 claimant. (Alfredo) but it did not inform him of the decision on the June 7, 2020 claim. The first notice of disqualification claimant received was the overpayment decisions dated November 2, 2021. The appeal was sent within ten days after receipt of the overpayment decisions.

The claimant worked for the employer during the 2019-2020 school year. The claimant worked part-time for the employer in the kitchen. Claimant's contract began in August 2019 and ended the first week of June. On April 6, 2020, claimant's contract was approved for the 2020-2021 school year. Claimant's contract began in August 2020.

The claimant also worked for STA of Iowa, Inc. as a bus driver. STA of Iowa, Inc. is a separate entity from Johnston Community School District. Claimant has wage credits with STA of Iowa, Inc. during his base period for this claim.

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

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. 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.

The next issue is whether the claimant has reasonable assurance of continuing work in the successive academic year with the employer. 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 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.

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 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, provides in relevant part:

Determining eligibility claims after employer protest.

...

(6) 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.

(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

...

(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.

In this case the claimant had an approximately 9 ½ months contract to provide services with the employer for the 2019-2020 school year. In April 2020 the school board approved claimant's contract to continue working for the school district for the 2020-2021 academic year. The 2019-2020 school year contract was finished the first week of June 2020. The claimant applied for benefits during the customary summer school break. The claimant does have other wage credits in his base period. The Administrative Law Judge finds claimant does have reasonable assurance of continued employment for the 2020-2021, school year but may be otherwise monetarily eligible according to his base period wages. The Claimant is not entitled to benefits from this Employer but may be entitled to benefits from his other base period employer, STA of Iowa, Inc. No determination has been made regarding claimant's eligibility for benefits with employer STA of Iowa, Inc.

**DECISION:**

The claimant's appeal is timely.

The January 20, 2021, reference 01, unemployment insurance decision is affirmed. The claimant does have reasonable assurance of returning to work the following academic year or term. The claimant is not eligible for benefits from this employer. The employer's account shall not be charged.

**REMAND:**

The monetary eligibility issue based upon wages from other employers as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

January 28<sup>th</sup>, 2022  
Decision Dated and Mailed

cs/rs