

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABDELKARIM T OMER
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 20A-UI-11962-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

Abdelkarim Omer (claimant) appealed a representative's September 16, 2020, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Des Moines Independent Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2020. The claimant participated personally. The employer participated by Rhonda Wagoner, Benefits Specialist, and Lashone Mosley, Transportation Director.

The employer offered and Exhibits One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, and Eleven were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an educational institution. The claimant was hired on April 27, 2015, as a full-time academic year bus driver. He worked each academic year since his hire and planned to return the following year. The employer also planned on his return for the next academic year. There was no question about his return.

After the term ends, sometimes the employer offers employees additional work in the summer. The claimant last worked outside of his normal job duties for the employer doing additional work in the summer of 2017. This additional work in the summer was not part of the claimant's regular job.

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 between academic terms.

Iowa Code section 96.4(5)b 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:

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.

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. 871-24.22(2)i(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

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.

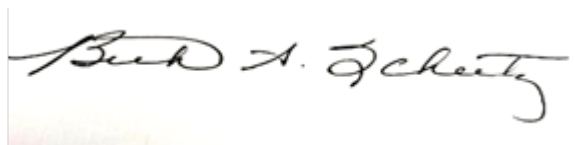
The claimant is employed by an educational institution. The claimant worked for the 2019-2020 academic year and was expected to work for the 2020-2021 academic year. The two years are successive terms. The claimant is between successive terms with an educational institution. The claimant argues he should be eligible for unemployment insurance benefits because the employer did not offer him work during the summer of 2020. Many employees of academic institutions have jobs in the summer from various employers. Not being offered a job to paint, drive, or sell something, is not an eligibility requirement for unemployment insurance benefits from an academic employer. Benefits are denied.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The representative's September 16, 2020, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer.

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 currently 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>.



Beth A. Scheetz
Administrative Law Judge

December 8, 2020
Decision Dated and Mailed

bas/scn