

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICKI L RIPLEY
Claimant

AMES COMMUNITY SCHOOL DIST
Employer

APPEAL 21A-UI-05666-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Vicki Ripley (claimant) appealed an Iowa Workforce Development February 17, 2021, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Ames Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2021. The claimant participated personally. The employer participated by Kristin Johnson, Director of Human Resources. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work, whether the employer's account is subject to charge, 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 worked for the employer since 1974 in various capacities. Most recently, she was hired on March 11, 2016, as an on-call substitute educational assistant. The claimant knew that the position was a school year position when she was hired. She knew she did not work during the summer, fall, spring, and/or winter breaks.

After her last assignment on March 11, 2020, the claimant chose to quarantine without a doctor's note. The school year ended on June 2, 2020. On or about July 8, 2020, the employer asked the claimant to indicate if she would accept work in the next term. The claimant did not accept and she was placed on inactive status.

The new school year started on September 8, 2021. Co-workers asked her to work and the claimant refused. The claimant did not accept assignments electronically. The claimant plans to return to work on April 30, 2021. The claimant only has wages from the employer in her base period of employment.

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 as of May 31, 2020.

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.

i. On-call workers.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

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 seasons are successive terms. The claimant was not eligible for benefits between successive terms with an educational institution. The claimant has no other non-educational institution wage credits in the base period. As such, benefits are denied as of May 31, 2020.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). A worker is

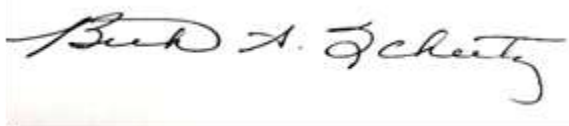
considered to be unavailable for work when an employee limits working hours for a particular reason. In this case, the claimant limited working hours to self-quarantine. The claimant was not able and available for work as of May 31, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The February 17, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer. In addition, she is not able and available for work. Benefits are denied as of May 31, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
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April 30, 2021
Decision Dated and Mailed

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