

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRISTINA L WIRTZ**  
Claimant

**APPEAL 18A-UI-06979-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CORNING COMMUNITY SCHOOL DISTRICT**  
Employer

**OC: 06/03/18  
Claimant: Respondent (4)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.4(5) – Reasonable Assurance  
Iowa Admin. Code r. 871-24.52(6) – Non-educational wage credits

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 25, 2018, (reference 02) unemployment insurance decision that allowed benefits and found their account subject to charges. The parties were properly notified about the hearing. A telephone hearing was held on July 17, 2018. Claimant participated. Employer participated through Jodi Lyddons.

**ISSUES:**

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

Is the claimant otherwise monetarily eligible for benefits based upon non-educational wage credits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant works full time for a different non-educational employer. She also works for this employer as a substitute teacher on Fridays during the school year. She remains on the list of possible substitute teachers for the 2018-2019 school year. She works as a substitute only when needed or as an on-call worker.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant does have reasonable assurance of returning to work the following academic term or year. The claimant is eligible for benefits based upon other non-educational institution wages in the base period.

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.

Iowa Admin. Code r. 871-24.22(2)i(2) provides:

**(2) Available for work.** The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

*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 between contracts or terms and during customary and established periods of holiday recesses 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(10) states: Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2) "i"(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2) "i"(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2) "i"(3) if they are:

- (1) Able and available for work.
  - (2) Making an earnest and active search for work each week.
  - (3) Placing no restrictions on their employability.
  - (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.
- e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

The legislature has provided a specific rule that applies to substitute teachers holding that this category of worker, among others, is not considered to be unemployed within the meaning of the law when the only base period wage credits are related to “on-call” work. When an individual is hired to work “on-call” the implied agreement is that they will only work when work is available and that work will not be regularly available.

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

Here, the employer has kept the claimant on the list of possible substitute teachers for the upcoming school year. Thus, the claimant does have reasonable assurance of continued employment for the 2018-19 academic year. Claimant also has other non-educational institution wages in her base period. Claimant has established that she is able to work, available for work, and actively and earnestly seeking work. Accordingly, benefits are allowed, based upon her non-educational institution wages, provided she is otherwise eligible.

**DECISION:**

The June 25, 2018, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant does have reasonable assurance of returning to work the following academic year or term. She is otherwise fully unemployed and eligible for benefits based upon non-educational institution wages. The account of this employer, Corning Community School District, (account number 101045) shall not be charged.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs