

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIELE E GAVRIL
Claimant

APPEAL NO. 09A-UI-11896-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALBIA COMMUNITY SCHOOL DISTRICT
Employer

OC: 07-19-09
Claimant: Appellant (1)

Iowa Code § 96.54 – Reasonable Assurance
871 IAC 24.22(2)I(3) – On Call Workers

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 18, 2009, reference 01, decision that allowed benefits but removed some part time wages. After due notice was issued, a hearing was held on September 2, 2009. The claimant did participate. The employer did participate through Peggy Newman, Business Manager.

ISSUE:

Is the claimant an on call worker or as needed worker with reasonable assurance that she will be called back during the next academic term?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a custodian as a substitute on call as needed beginning September 15, 2008 through date of hearing as she remains employed. On May 20, 2009 the claimant was sent a reasonable assurance letter that she would be hired back as a substitute custodian for the following year. The claimant accepted the letter on June 9, 2009. The claimant knew that the position was on call as needed when she was hired and plans to return as a substitute. The employer also plans on her return for the next season.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is between successive terms with an educational institution. For the following reasons the administrative law judge concludes she is and that she was an on call worker.

Iowa Code § 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.

The claimant is employed by an educational institution. The claimant worked for the 2007 season and is expected to work for the 2008 season. The two seasons are successive terms. The claimant is between successive terms with an educational institution.

Additionally, the claimant was employed as an on call worker.

871 IAC 24.22(2)i(3) provides:

Benefits 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.

(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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code § 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The employer was not obligated to hire the claimant for a full time position when one became available. The employer's decision not to hire the claimant for a full time position is not grounds for awarding unemployment insurance benefits.

The claimant is entitled to unemployment benefits, but the wages from Albia Community School District will be removed from her base period.

DECISION:

The representative's August 18, 2009 decision (reference 01) is affirmed. The claimant is eligible to receive unemployment insurance benefits but the wages from Albia Community School District will be removed from her base period and the school district will not be charged for her unemployment benefits.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs