

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINNEA VAN DER VEER
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 20A-UI-08399-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Eligibility – Reasonable Assurance

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 14, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 27, 2020, at 2:00 p.m. Claimant participated with her attorney Marlon Mormann. Employer participated through Rhonda Wagoner, Benefit Specialist, and Bobbie Jo Sheridan, Coordinator of Metro Kids Program. Claimant's Exhibits A - D were admitted. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant is eligible for benefits between academic years or terms.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

During the 2019-2020 school year, claimant was employed by Des Moines Independent Community School District working in both the food service program and the Metro Kids program. The food service program was claimant's primary job. Claimant supplemented her work for the food service program by also working for employer's Metro Kids program, which was a before- and after-school program on a trial period during the 2019-2020 school year.

Employer closed due to Covid-19 on March 13, 2020. Claimant did not perform work but was paid by employer through May 29, 2020. Before the school closed due to Covid-19, the 2019-2020 school year was scheduled to end on May 29, 2020 with the summer break beginning June 1, 2020. Claimant worked for employer during the summer of 2019. The summer program was not available for the summer of 2020. Claimant was not guaranteed employment during the summer of 2020.

For the 2020-2021 school year, both parties planned for claimant to return to work for employer. Prior to Covid-19, the 2020-2021 school year was scheduled to begin on August 26, 2020. Employer informed claimant of training and return to work dates for both the food service program and the Metro Kids program. Training for the food service program was held on

August 5, 2020. On August 5, 2020, employer provided claimant with the return to work dates – September 3, 2020 for Metro Kids and September 8, 2020 for food service. Employer informed claimant that she would be working her regular hours for the 2020-2021 school year between her work for the food service program and Metro Kids. Claimant continued receiving health insurance benefits from employer through the summer of 2020. Employer did not tell claimant that her employment had been terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant had reasonable assurance of returning to work the following academic year.

Iowa Code section 96.4(5) 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 96.1A, 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.

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.

The parties planned for claimant to return to work for employer for the 2020-2021 school year as evidenced by claimant being notified of training and return to work dates, continuing to receive health insurance benefits and not receiving notice that her employment was terminated. Notwithstanding the uncertainty of Covid-19 and its effect on public education, claimant had reasonable assurance of returning to work for employer for the 2020-2021 school year. Accordingly, benefits are denied.

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 due to disqualifying separations, 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The July 14, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant had reasonable assurance of returning to work for the 2020-2021 school year. Benefits are denied.



Adrienne C. Williamson
Administrative Law Judge
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September 10, 2020
Decision Dated and Mailed

acw/scn