

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID A NELSON
Claimant

**JOHNSTON COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 21A-UI-04213-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.4(5) – Reasonable Assurance
871 IAC 24.24.22(2)i – On Call Worker

STATEMENT OF THE CASE:

Johnston Community School District (employer) appealed a representative's January 20, 2021, decision (reference 01) that concluded David Nelson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2021. The claimant participated personally. The employer participated by Anthony Spurgetis, Director of Human Resources. 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 a part-time substitute bus driver for the employer from October 8, 2010, through November 15, 2017. The employer outsourced bus drivers to Student Transportation of America (STA). He was hired by STA on or about November 16, 2017 and worked through November 16, 2020. The claimant winters in Arizona. STA has asked him to work again for them when he returns.

The claimant's wife took tickets at the employer's football games for years. When she passed away the employer asked the claimant if he would do the job. He wanted to take tickets without pay but the employer would not allow it.

The claimant was hired in the fall of 2019, as a ticket taker for football games. He worked about four hours at approximately 5 games and earned \$10.00 per hour. The claimant and employer knew that the position would end with the season. He was not hired again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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. 871-24.52(9) provides in part:

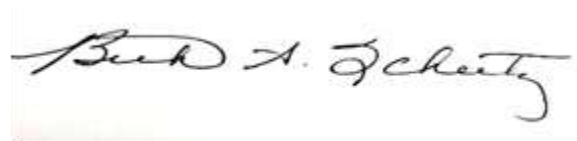
(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday 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 was employed by an educational institution for a few weeks in the Fall of 2019. He was not an on call worker. The employer did not offer him work in the next season and he

had no expectation of working again for the employer. The claimant filed for unemployment insurance benefits with an effective date of May 31, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 20, 2021, decision (reference 01) is affirmed. The claimant is eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer.



Beth A. Scheetz
Administrative Law Judge

April 12, 2021
Decision Dated and Mailed

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