

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CAREY R WHITE
Claimant

**EAST BUCHANAN COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 21A-UI-01856-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Eligibility Between Academic Years or Terms

STATEMENT OF THE CASE:

On December 28, 2020, Carey White (claimant/appellant) filed an appeal from the December 21, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 17, 2020 based on a finding claimant's employment occurred during a vacation or holiday recess and she had reasonable assurance of employment.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for March 22, 2021 at 10 a.m. Claimant participated personally. East Buchanan Community School District (employer/respondent) participated by Business Manager Teresa Knipper. Superintendent Dan Fox participated as a witness for employer.

Claimant's Exhibit 1 was admitted. Employer's Exhibits 1-4 were admitted Official notice was taken of the administrative record.

ISSUE:

Is the claimant 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:

Claimant began working for employer on August 24, 2005. Claimant is still employed by employer part-time as a bus driver, working between three and four hours per school day. The bus driver contract runs during the academic year. The 2019-2020 academic year began August 23, 2019 and continued until May 22, 2020. In mid-June 2020, employer offered and claimant accepted an offer for the school year beginning August 24, 2020.

In addition to the part-time bus driver contract, there is work available for claimant and the five other bus drivers on an as-needed basis for school activities, such as driving teams to and from sporting events. This work is not guaranteed. There were fewer of such opportunities available in

the summer of 2020 due to the pandemic. Claimant filed a weekly claim for benefits each week from the benefit week ending May 23, 2020 through the benefit week ending August 22, 2020. Claimant does not have non-educational institution employment wage credits in the base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 21, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 17, 2020 based on a finding claimant's employment occurred during a vacation or holiday recess and she had reasonable assurance of employment is AFFIRMED.

Iowa Code section 96.4(5)a provides:

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. 871-24.52(6) provides:

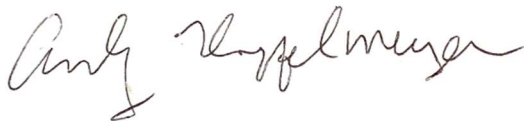
Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Employer is a nonprofit organization or government entity; claimant performed services in the prior academic year; and she had reasonable assurance she would perform services in the subsequent academic year. Therefore, benefits based on her service with employer cannot be paid to claimant for any week of unemployment which begins during the period between two successive academic years or terms.

The as-needed work, driving for school activities, was not part of claimant's employment contract and was not guaranteed. While there was less of such work available in 2020 due to the pandemic, that is the nature of as-needed or on-call work. Claimant does not have other non-educational institution wage credits in the base period.

DECISION:

The December 21, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 17, 2020 based on a finding claimant's employment occurred during a vacation or holiday recess and she had reasonable assurance of employment is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 24, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.