

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KERRY L HOHBACH
Claimant

RED OAK COMMUNITY SCHOOL DISTRICT
Employer

APPEAL 21A-UI-18035-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (4)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal of the July 2, 2021 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective May 24, 2020 as her unemployment occurred between academic years or terms. The parties were properly notified of the hearing. A telephone hearing was held on September 29, 2021. The claimant participated personally. The employer participated through witness Deb Drey. The administrative law judge took administrative notice of the claimant’s unemployment insurance benefits records.

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 was employed as a substitute teacher for this educational employer in August of 2012. She remains employed as a substitute teacher to date. Her position as a substitute teacher is “on-call”, meaning that she is not guaranteed a certain amount of work. She may also choose which shifts to accept or decline based upon her availability. Claimant only works while school is in session.

March 13, 2020 was the last day that students were on site at the school during the 2019-2020 school year because of the COVID-19 pandemic and the order closing physical school locations made by Governor Reynolds. This employer’s customary spring break was March 16, 2020 through March 20, 2020 and students did not return after spring break. The last day of the 2019-2020 school year was May 26, 2020. The first day of the 2020-2021 school year was approximately August 23, 2020. Claimant remained on the substitute teacher list during the summer months that school was not in session. She returned to her position as an on-call substitute teacher during the 2020-2021 school year.

Claimant's original claim date for regular unemployment insurance benefits is April 12, 2020. She did not work for any other employers besides this educational employer during her base period, which was January 1, 2019 through December 31, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 96.19, 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.**

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.

(emphasis added).

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.

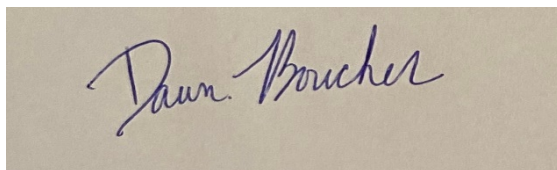
Iowa Admin. Code r. 871-24.52(6) provides:

(6) 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 non-school wage credits remain on the claim to qualify under Iowa Code § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

In this case, the school’s customary summer break occurred during the benefit week of May 24, 2020. Effective May 24, 2020, the claimant had reasonable assurance that she would return to her regular position as an on-call substitute teacher for the upcoming school year and her unemployment occurred between the school’s academic years or terms. Further, the claimant does not have sufficient other non-educational wages credits in which to become monetarily eligible for regular State of Iowa funded unemployment insurance benefits in her base period because this was the only employer she was paid wages from in 2019. As such, benefits are denied effective May 24, 2020 through August 22, 2020 (the employer’s summer break period) pursuant to Iowa Code § 96.4(5).

DECISION:

The July 2, 2021 (reference 02) decision is modified in favor of the appellant. The claimant’s unemployment occurred between the employer’s academic years or terms and the claimant had reasonable assurance to return to the position following the academic years or terms pursuant to Iowa Code § 96.4(5). As such, benefits are denied effective May 24, 2020 through August 22, 2020.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

October 4, 2021
Decision Dated and Mailed

db/scn

Note to Claimant

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.