

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA BERTELSEN
Claimant

MAYES EDUCATION INC
Employer

APPEAL 21A-UI-19646-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/06/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available for Work
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Admin. Code r. 871-24.51(6) – Reasonable Assurance

STATEMENT OF THE CASE:

Debra Bertelsen (claimant) appealed a representative's August 24, 2021 decision (reference 01) that concluded claimant was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Mayes Education Inc. (employer). No exhibits were offered. A hearing was scheduled for October 27, 2021 at 2:00 p.m. The claimant participated personally. Dawn Ramaker participated on behalf of the employer. The employer changed the mailing address to include the name Waldorf University. 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 hired on May 15, 2015, as a cook. The claimant knew that the position was during the academic year when she was hired. The claimant planned to return to work in the Fall every year. Although no formal letter or contract exchanged hands, the employer expected the claimant to return to work in the Fall and the claimant planned to return to work in the Fall. The claimant worked various events during the summer totaling 94.25 hours between May 15, 2021 and August 1, 2021. The claimant averaged 150 hours during the summer months in the years prior to 2021. The employer also plans on claimant's return for the next season every year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not 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. 871-24.22(2)i(2) provides:

Benefit 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.

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 had reasonable assurance that her employment would continue following the employer's established and customary vacation period. The claimant has no other non-educational institution wage credits in the base period. As such, benefits are denied.

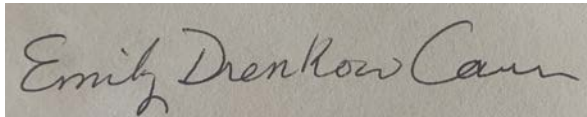
The claimant is employed by an educational institution. The claimant worked for the 2020-2021 season academic year and returned to work for the 2021 season academic year. The two seasons are successive terms. The claimant's application for benefits is between successive terms with an educational institution.

The claimant is employed by an educational institution. The claimant worked for the fall semester of 2021. In the Spring of 2021, she planned to work for the Fall semester of 2021. The two semesters are successive terms. The claimant filed for unemployment insurance benefits with an effective date of June 6, 2021. She filed for unemployment insurance benefits between successive terms with an educational institution when she had a reasonable assurance of employment in the next semester. Benefits are denied.

DECISION:

The representative's August 24, 2021, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer.

The claimant did have reasonable assurance of returning to work following the established and customary vacation period. Benefits are denied effective June 6, 2021.



Emily Drenkow Carr
Administrative Law Judge

November 10, 2021
Decision Dated and Mailed

ed/scn