

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VALERIE COHEN

Claimant

APPEAL 20A-UI-10335-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST

Employer

OC: 05/31/20

Claimant: Appellant (4)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant/appellant, Valerie Cohen, filed an appeal from the August 21, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 10, 2020. The claimant participated personally and was represented by Kevin Healy, a senior-certified law student with the University of Iowa. John S. Allen, attorney at law, also attended. The employer participated through Carrie Weber. Lashone Mosely and Rhonda Wagoner testified.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1-9 and Claimant Exhibits A-K were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

The issues are whether the claimant filed a timely appeal, and whether the claimant is between successive terms with an educational institution and had reasonable assurance of employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is an educational institution and is not claimant's only employer in her base period.

The claimant began employment in 2014. Claimant is employed as a part-time bus driver for the Des Moines Independent Community School District. Claimant was hired to work for the academic year, which runs August/September through May each year. Claimant last physically worked on the job March 15, 2020, but was paid through May 28, 2020 for the 2019-2020 school year.

Employer's spring break was from March 16-25, 2020. Students did not return to the schools and finished the academic term through virtual learning. Claimant did not have students to bus.

Prior to school ending, claimant was not informed she would be invited to return back to school for the 2020-2021 school year. Typically, the school sends a notice of assurance to employees to sign before the end of school year. Drivers then attend training in the fall and bid for routes at that time.

Due to the uncertainty associated with COVID-19, employer did not extend assurance letters before the school year ended. The undisputed evidence is neither party knew what the bussing needs would be for the upcoming school year.

On July 23, 2020, employer sent claimant an email about returning to work (Employer Exhibit 7). Claimant denied receipt. The email states the intent of the email and attached survey is to determine whether claimant planned to return for the next school year.

Claimant did attend and participate in training beginning August 21, 2020 and August 26, 2020. She was assigned her route on September 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not have reasonable assurance of returning to work the following academic term or year until July 23, 2020.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

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.

The employer is an educational institution. The claimant worked for the 2019-2020 school year, although her route ended in March, rather than in May 2020 due to the COVID-19 pandemic. Claimant is accustomed to receiving a letter of assurance prior to the school year ending that she will have a bus route for the next academic year.

Since the claimant did not receive notice of a bus route being available until July 23, 2020, she did not have reasonable assurance of continued employment for the 2020-2021 school year until July 23, 2020 when the employer contacted the claimant via email. See *Employer Exhibit 7*. As a result, the claimant is considered unemployed for the period from May 31, 2020 through July 22, 2020. Benefits are allowed, provided she is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The unemployment insurance decision dated August 21, 2020, (reference 01) is modified in favor of claimant/appellant. The claimant did not have reasonable assurance of returning to work the following academic year or term from May 31, 2020 through July 22, 2020. Benefits are allowed for that period.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

December 3, 2020
Decision Dated and Mailed

jlb/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits effective July 24, 2020. 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 due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:
www.iowaworkforcedevelopment.gov/pua-information