

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARK L MCGRUDER**  
Claimant

**IOWA SCHOOL FOR THE DEAF**  
Employer

**APPEAL 20A-UI-05782-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

On June 10, 2020, Mark L. McGruder (claimant) filed an appeal from the June 4, 2020, reference 02, unemployment insurance decision that denied benefits based on the determination he has reasonable assurance of continued employment the following school year with Iowa School for the Deaf (employer). After due notice was issued, a telephone hearing was held on July 23, 2020. The claimant participated personally. The employer participated through Deb LeHeup, Director of Human Resources. No exhibits were admitted into the record.

**ISSUE:**

Does the claimant have reasonable assurance of continued employment in the next school term or year?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time Driver for the employer during the 2019 – 2020, school year. The claimant has only employment wage credits from an educational institution in the base period. The claimant was laid off on March 13, 2020, due to the school closure as a result of the COVID-19 pandemic. In April, the claimant's supervisor told him if the kids returned to school in the fall, then he would return to work for the following school year. The 2019 – 2020 school year ended May 29, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant has reasonable assurance of returning to work in the following academic term or year. Benefits are denied effective May 31, 2020.

Iowa Code section 96.4(5) provides, in relevant part:

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.

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.

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 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 U.S. Department of Labor issued Program Letter No. 5-17 on December 22, 2016, that sets out guidance for the department's interpretation of the Federal Unemployment Tax Act (FUTA). It sets out three factors required for a reasonable assurance determination. First, a genuine offer of employment from a person with authority may be written, oral or implied. Second, the employment offered must be in the same capacity (e.g. professional or non-professional) as held in the previous term. Third, the economic conditions offered may not be "considerably less" than in the prior term. The letter defined "considerably less" as not earning at least 90 percent of the amount earned in the earlier academic year or term. It goes on to examine whether contingencies within the offer are within the employer's control as a means to determine if the claimant has reasonable assurance of continued employment. Circumstances such as enrollment, funding and seniority are not considered to be within the employer's control. The letter requires analysis of the "totality of circumstances" to determine whether it is "highly probable" that there is a job available for claimant the following academic term. It also requires weight be given to the contingency of the offer and if it is "highly probable" that the contingency will be met. [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=8999](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8999)

In this case, the claimant learned from his supervisor that there would be continuing work the following school year, so long as the children returned. This is a circumstance outside the employer's control. When considering the totality of the circumstances, it is highly probable that the claimant will have part-time work available to him in the next school year. The claimant and employer should notify Iowa Workforce Development (IWD) if that changes. Additionally, the claimant does not have any other non-education based wages in his base period. As a result, the claimant is not considered unemployed. Regular benefits are denied effective May 31, 2020.

#### **DECISION:**

The June 4, 2020, reference 02, unemployment insurance decision is affirmed. The claimant has reasonable assurance of returning to work in the following academic year or term. Benefits are denied effective May 31, 2020.



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Stephanie R. Callahan  
Administrative Law Judge

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August 3, 2020  
Decision Dated and Mailed

src/sam

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.