

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALMA ERDEN
Claimant

APPEAL 21A-UI-05819-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

AMES COMMUNITY SCHOOL DIST
Employer

OC: 05/31/20
Claimant: Appellant (4)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 17, 2021 (reference 01) unemployment insurance decision that concluded the claimant was not eligible for benefits because her unemployment occurred between academic years or terms. The parties were properly notified of the hearing. A telephone hearing was held on April 29, 2021. The claimant participated personally. The employer participated through witness Kristin Johnson. The parties waived due notice of the issue of reasonable assurance and whether the employer's account was chargeable pursuant to Iowa Code § 96.4(5) and § 96.7(2)a(2). Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant eligible or benefits between academic years or terms?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a part-time educational assistant. She works when school is in session and does not typically work during breaks or periods between academic years or terms.

Following the 2019/2020 school year, claimant was mailed a confirmation of employment. See Exhibit 1. She signed and returned the confirmation of employment agreeing to return in her same position as an education assistant when the next school year began on August 20, 2020.

The school year did not begin until September 3, 2020 due to a delay in opening because of the COVID-19 public health emergency. Claimant was not paid from August 20, 2020 through September 2, 2020 during the delay because she did not work and earn wages. The employer intends to pay the claimant for additional days worked past the original end date of June 2, 2021 because of the original delay and subsequent extension of the school year.

Claimant filed her original claim for benefits effective May 31, 2020. She has no other wages besides wages from this employer for instructional work at an educational institution in her base period.

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(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.

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 claimant had reasonable assurance to return to this employment in the same capacity as a part-time educational assistant for the 2020/2021 school year when she received the confirmation of employment letter from the employer. As such, benefits are denied from May 31, 2020 through August 19, 2020, when the claimant had reasonable assurance between academic years or terms.

However, claimant's reasonable assurance was to return on August 20, 2020 and not September 3, 2020. While the employer may argue that wages will be made up and/or paid to the claimant in June of 2020 when the school is still in session past the original June 2, 2021 session end date, this is speculative as these events have yet to occur.

From August 20, 2020 through September 2, 2020, the claimant no longer had reasonable assurance of working those days because school was delayed and not in session. The benefit week of August 16, 2020 through August 22, 2020, the claimant would have had reasonable assurance for the majority of the work week as she was not scheduled to return until Thursday,

August 20, 2020. As such, benefits are denied for that one-week period, pursuant to reasonable assurance under Iowa Code § 96.4(5).

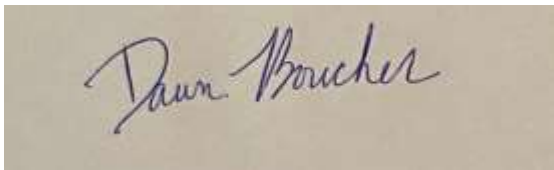
From August 23, 2020 through August 29, 2020, the claimant no longer had reasonable assurance of work and was not performing work or earning wages due to the delay. As such, the claimant is eligible for unemployment insurance benefits from August 23, 2020 through August 29, 2020, as she no longer had reasonable assurance of working that week.

From August 30, 2020 through September 5, 2020, the claimant began working on Thursday September 3, 2020. As such, for the majority of that work week she did not have reasonable assurance of work and would not be denied on that basis. As such, unemployment insurance benefits are allowed from August 30, 2020 through September 5, 2020, subject to the claimant's reporting and deduction of gross wages earned for that week. No further weekly-continued claims were filed after September 5, 2020 as the claimant had returned to her regular schedule with the employer.

DECISION:

The February 17, 2021 (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant had reasonable assurance and regular unemployment insurance benefits are denied on that basis from May 31, 2020 through the benefit week-ending August 22, 2020.

No disqualification based upon reasonable assurance is imposed for the two-week period beginning August 23, 2020 through August 29, 2020. Benefits are allowed from August 23, 2020 through September 5, 2020, provided the claimant remained otherwise eligible.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style and is positioned above a horizontal line.

Dawn Boucher
Administrative Law Judge

May 07, 2021
Decision Dated and Mailed

db/ol

Note to Claimant

- If this decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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 claimant who are unemployed due to the Coronavirus public health emergency.
- You will need to apply for PUA benefits 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 benefits 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 of 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 for PUA benefits and have been approved for PUA benefits, this decision will not negatively affect your PUA benefits.