

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SUSAN LAWLER
Claimant

APPEAL NO. 21A-UI-06661-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMES COMMUNITY SCHOOL DISTRICT
Employer

OC: 03/08/20
Claimant: Appellant (4)

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

The claimant, Susan Lawler, filed a timely appeal from the February 17, 2021, reference 03, decision that denied benefits effective May 31, 2020, based on the between academic disqualification provision set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on May 12, 2021. Claimant participated and presented additional testimony through Brad Lawler. Kristin Johnson represented the employer. There were three matters set for a consolidated hearing: 21A-UI-05776-JTT, 21A-UI-06654-JTT and 21A-UI-06661-JTT. Exhibits 1, 5 through 9, 11, 12, 13, 19 through 23, and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, DBIN, WAGE-A and WAGE-B. The administrative law judge also took official notice that the claimant did not apply for and was not approved for Pandemic Unemployment Assistance (PUA) benefits.

ISSUES:

Whether the claimant is disqualified for benefits effective May 31, 2020, based on the between academic disqualification provision set forth at Iowa Code section 96.4(5).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: During the 2019-2020 academic year, the claimant was employed by the Ames Community School District as a part-time, on-call substitute teacher. The claimant worked exclusively at Ames High School. During the 2019-2020 academic year, the claimant worked in short-term assignments that lasted three days or less. The work paid \$120.00 per day. The claimant has traditionally not worked during academic breaks.

The District's scheduled spring break for the 2019-2020 academic year was set for the week of March 16-20, 2020. Classes were scheduled to resume on Monday, March 23, 2020.

The District did not resume classes on March 23, 2020. Instead, and in response to a state directive, the District closed for in-person classes to slow community spread of COVID-19. No one from the District contacted the claimant. The claimant was scheduled to substitute teach on

March 23, 2020, but that teaching assignment was cancelled in connection with the District's temporary shutdown.

The District remained entirely closed for classes until April 20, 2020, at which time, the District implemented a remote/virtual learning curriculum. The District did not have substitute teaching opportunities available to the claimant for the remainder of the academic year.

The 2019-2020 academic year ended on Tuesday, June 2, 2020. Prior to the academic year coming to an end, the employer did not contact the claimant to assure continued work as a substitute teacher during the 2020-2021 academic year.

On July 7, 2020, the District sent a broadcast email to survey substitute teachers on the substitute teaching roster regarding whether they would be returning to substitute teach during the 2020-2021 academic year or would be limiting their availability. The District had not previously sent such surveys. On July 7, 2020, the claimant responded that she would be available to substitute teach at the high school.

On July 22, 2020, the District sent an email message to substitute teachers asking them to sign up in the Frontline system to accept substitute teaching positions for the 2020-2021 academic year. On July 22, 2020, the claimant signed up in Frontline for substitute teaching opportunities at the high school. The employer deems this contact on July 22, 2020 to be "reasonable assurance" of continued employment.

During much of the summer break, there had been uncertainty regarding the approach the District would take regarding students' return to classes at the start of the 2020-2021 academic year. The school board wrestled with how to ensure student and staff safety.

The District ultimately decided on a phased-in hybrid approach, whereby students attended in-person classes during part of the school week and participated in remote learning for the remainder of the school week.

The start of the 2020-2021 academic year was delayed to September 8, 2020. The District had substitute teaching work available for the claimant at the high school from the time the academic year began. Short-term subbing work was to pay \$125.00, an increase of \$5.00 per day over the previous year. On August 28, 2020, the District commenced contacting the claimant about substitute teaching work.

REASONING AND CONCLUSIONS OF LAW:

Because the claimant is disqualified for benefits under the availability statute, the between academic terms disqualification issue is effectively moot. See Appeal Numbers 21A-UI-06654-JTT and 21A-UI-05776-JTT. The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

...

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.

...

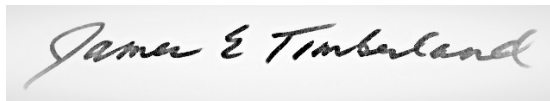
871 IAC 24.51(6) defines "reasonable assurance" as follows:

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.

If the claimant had met the availability requirement, the claimant would not have been disqualified for benefits based on the between academic terms disqualification provision for the period between May 31, 2021 and the benefit week that ended July 18, 2021, during which time the claimant did not have reasonable assurance from the employer of continued work as a substitute teacher in the 2020-2021 academic year. During the benefit week that started July 19, 2020, the employer provided such reasonable assurance of continued similar employment for similar or better compensation. Accordingly, the claimant would be disqualified for benefits under the between academic terms disqualification provision effective July 19, 2020 through September 5, 2020.

DECISION:

The February 17, 2021, reference 03, decision is modified in favor of the claimant/appellant as follows. If the claimant had met the availability requirement, the claimant would not have been disqualified for benefits based on the between academic terms disqualification provision for the period between May 31, 2021 and the benefit week that ended July 18, 2021, during which time the claimant did not have reasonable assurance from the employer of continued work as a substitute teacher in the 2020-2021 academic year. During the benefit week that started July 19, 2020, the employer provided such reasonable assurance of continued similar employment for similar or better compensation. Accordingly, the claimant would be disqualified for benefits under the between academic terms disqualification provision effective July 19, 2020 through September 5, 2020.



James E. Timberland
Administrative Law Judge

September 16, 2021
Decision Dated and Mailed

jet/scn