

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANNA L HURT
Claimant

APPEAL 21A-UI-07203-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTON COMMUNITY SCHOOL DISTRICT
Employer

OC: 04/19/20
Claimant: Appellant (1R)

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Deanna Hurt (claimant) appealed an Iowa Workforce Development March 2, 2021, decision (reference 02) that denied benefits between successive terms with Creston Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2021. The claimant participated personally. The employer participated by Patricia Moeller, Bookkeeper. The administrative law judge took official notice of the administrative file.

ISSUES:

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 September 14, 2017, as a substitute teacher. The claimant knew that the position was for periods when the students were not on customary breaks.

The employer closed due to the pandemic from March 24, 2020, through May 30, 2020. The claimant filed for unemployment insurance benefits with an effective date of April 19, 2020. Her weekly benefit amount was determined to be \$122.00. The claimant filed for and received benefits from April 19, 2020, to the week ending May 30, 2020, during the school closure. An Iowa Workforce Development March 2, 2021, decision (reference 01) allowed unemployment insurance benefits as of April 19, 2020.

The school year ended as of May 30, 2020, and the employer provided the claimant with information regarding continued employment for the following academic year. The claimant

continued to file and receive unemployment insurance benefits after May 31, 2020. She decided to retire and quit being a substitute teacher. The employer had work available for the claimant in the next academic 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 as of May 31, 2020.

Iowa Code section 96.4(5)a 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.

Iowa Admin. Code r. 871-24.52(10)e provides:

(10) Substitute teachers.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

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.

i. On-call workers.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

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 his 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.

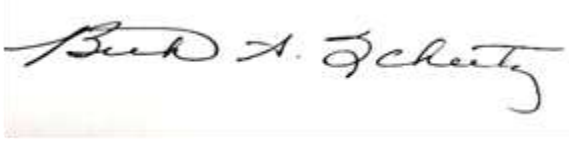
The claimant is employed by an educational institution. She had reasonable assurance that his employment would continue following the employer's established and customary vacation period. The claimant has no other non-educational institution wage credits in the base period. The claimant chose to retire and not return to work. As such, benefits are denied as of May 31, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The March 2, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits as of May 31, 2020, because she was between successive terms with the employer. She had reasonable assurance of returning to work following the established and customary vacation period.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

May 26, 2021
Decision Dated and Mailed

bas/ol