

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE L FETTERS
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 20A-UI-09525-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

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

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On August 11, 2020, Denise L. Fetters (claimant) filed an appeal from the August 7, 2020, reference 01, unemployment insurance decision that denied benefits based on the determination she had reasonable assurance of continued employment the following school year with Des Moines Ind. Community Sch. Dist. (employer). After due notice was issued, a telephone hearing was held on September 25, 2020. The claimant participated personally, and she was represented by Nathaniel R. Boulton, Attorney. The employer participated through Rhonda Wagoner, Benefit Specialist, and Lashone Mosley, Director of Transportation. Joy Linquist was sworn in as a witness, but she did not testify. The Claimant's Exhibit A and the Employer's Exhibits 1 through 7 were admitted into the record without objection. The administrative law judge took official notice of the claimant's wage history.

ISSUE:

Did 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: On November 1, 2005, the claimant was hired as a full-time Bus Driver during the school year. During summer breaks, the employer gets requests from different programs to provide transportation. If they want to, the drivers can bid on the jobs in order of seniority. The claimant usually worked during the summer, but hours were never guaranteed.

The claimant was employed in her normal job during the 2019-2020 school year. On or about March 13, 2020, the employer ended classes due to the COVID-19 pandemic. However, the claimant was paid by the employer through May 29, the scheduled end of the school year. At the time the school year ended, it was unclear if the employer was going to need bus drivers for the following school year due to the ongoing COVID-19 concerns.

The claimant filed her claim for unemployment insurance benefits effective May 31. The claimant's base period includes only wage credits from this employer. On July 23, the employer notified the claimant that there would be work for her during the 2020-2021 school year. On August 21 and August 26, the claimant reported to training for the new school year.

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. As a result, benefits are allowed from May 31 through July 25, 2020, provided the claimant is otherwise eligible. Benefits are denied effective July 26, 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 2019-2020 school year was scheduled to end on May 29, 2020 and the employer stopped paying the claimant's salary. However, at the time the school year ended, the claimant did not have reasonable assurance of returning the next school year. Benefits are allowed from May 31 through July 25, provided the claimant is otherwise eligible.

The claimant did have reasonable assurance of continued employment for the 2020-2021 school year effective July 26. The employer notified her in writing that she would be returning to work the following school year. While the claimant usually works over the summer, it is in a substitute position and no hours are guaranteed. The Court has denied benefits where a claimant did not work over the summer for a community college, which had previously held a summer session, because of reasonable assurance. *Merged Area VII v. Iowa Dep't of Job Serv.*, 367 N.W.2d 272, 274, 275 (Iowa Ct. App. 1985). As the claimant does not have other non-education wages in her base period, she is not considered unemployed and is not eligible for regular unemployment insurance benefits effective July 26, 2020.

DECISION:

The August 7, 2020, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant did not have reasonable assurance of returning to work the following academic year or term until July 23, 2020. Benefits are allowed from May 31 through July 25, 2020, provided the claimant is otherwise eligible. Benefits are denied effective July 26, 2020.



Stephanie R. Callahan
Administrative Law Judge

September 29, 2020
Decision Dated and Mailed

src/sam

Note to Claimant. This decision determines you are not eligible for regular unemployment insurance benefits effective July 26, 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. 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.