

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEIDI L LUDOLPH
Claimant

APPEAL 21A-UI-04454-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GILBERTVILLE – DON BOSCO
Employer

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

Iowa Code § 96.4(5) – Eligibility Between Academic Years or Terms

STATEMENT OF THE CASE:

On February 1, 2021, the claimant, Heidi L. Ludolph, filed an appeal from the January 27, 2021 (reference 02) unemployment insurance decision that denied benefits effective May 24, 2020, based upon a determination that claimant had reasonable assurance of continued employment in the coming academic year or term. The parties were properly notified of the hearing. A telephonic hearing was held on Monday, April 12, 2021. The claimant, Heidi L. Ludolph, participated. The employer, Gilbertville—Don Bosco, participated through witness Tiffany Moses, Business Manager; and hearing representative Paul Jahnke represented the employer. Claimant's Exhibits A and B were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Did claimant Heidi L. Ludolph have reasonable assurance of continued employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began part-time employment with employer Gilbertville—Don Bosco as an after-school daycare employee on August 14, 2019. Claimant remains employed with the after-school daycare program of the employer, now as a supervisor.

On March 15, 2020, Governor Kim Reynolds issued a proclamation closing all K-12 schools in Iowa due to the COVID-19 pandemic.

Beginning the week of April 5, 2020, claimant began filing weekly continued claims for benefits due to a lack of work with the employer because of the pandemic. The school, and therefore the after-school daycare program, was closed due to the governor's proclamation, and there was no work available for claimant.

Claimant was sent a letter asking her to confirm that she would be returning for the 2020-21 academic year. Claimant sent back a response indicating that she intended to return to her position. After that, on April 13, 2020, the employer sent her a letter of agreement confirming

that she would be returning to employment and formalizing her employment offer for the coming academic year.

The employer's 2020-21 academic year started August 24, 2020. That is the week that claimant would have returned to work.

Claimant is listed as Group Code 8, which currently indicates that she is unemployed because of the pandemic. Under this group code, claimant is still attached to the employer but is not able to work due to the pandemic, and the employer is relieved of any charges.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant had reasonable assurance of continued employment. The underlying decision is affirmed.

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.

In this case, claimant was a school-year employee who did receive a letter of the assurance from the employer at the end of every school year. Effective May 24, 2020, the week the school year was over for summer break, claimant had reasonable assurance of continued employment in the coming academic year, and she was not entitled to benefits.

This matter shall be remanded for a determination of overpayment.

DECISION:

The January 27, 2021 (reference 02) unemployment insurance decision is affirmed. Claimant had reasonable assurance of continued employment in the coming academic year. Effective May 24, 2020, she was not entitled to benefits.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a determination of whether claimant has been overpaid regular unemployment insurance benefits, Federal Pandemic Unemployment Compensation benefits, and Lost Wages Assistance Program benefits.



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April 14, 2021
Decision Dated and Mailed

lj/scn