

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JENNIFER L HAVEMANN
Claimant

BERGMAN ACADEMY
Employer

APPEAL 23A-UI-00840-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

Jennifer L. Havemann, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) January 19, 2023 (reference 05) unemployment insurance (UI) decision. The decision denied Ms. Havemann REGULAR (state) UI benefits as of November 22, 2020 because IWD concluded that she was unemployed from her teaching job at an educational institution during a customary vacation or holiday recess. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed a notice of hearing to the Ms. Havemann, the employer and IWD.

The undersigned administrative law judge held a hearing on February 23, 2023. The undersigned heard the following appeals together and created one hearing record: Appeals 23A-UI-00837-DZ-T through 23A-UI-00854-DZ-T, and 23A-UI-00856-DZ-T through 23A-UI-00859-DZ-T. Ms. Havemann participated personally. Nicole Merrill, attorney, represented Ms. Havemann. The employer participated through Chris Newton, director of finance and operations. IWD participated through Daniel Noonan, workforce program coordinator. Jeff Koncsol, attorney, represented IWD. The undersigned took official notice of the administrative record and admitted Claimant's Exhibits A-G and Department's Exhibits 1-4.

ISSUES:

Does Ms. Havemann have reasonable assurance of continued employment in the next school term or year?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Havemann began working for the employer, a base period employer, in 2009. She works as a full-time physical education teacher. The employer pays her a salary of about \$47,000.00 per year per a 12-month teaching contract. The teaching contract runs from July 1 of the first year to June 30 of the second year. Ms. Havemann has no other base period wages.

Ms. Havemann also teaches enrichment classes for one hour after school each school day, during Thanksgiving and Winter breaks, and summer camp during the summer break. The

employer offers school staff the option to teach the classes and/or camp and Ms. Havemann voluntarily participates. Neither the enrichment classes nor the summer camp are part of Ms. Havemann's teaching contract. The employer pays Ms. Havemann 80 percent of the participant fees for each class and/or camp. The employer does not guarantee Ms. Havemann hours or a certain amount of pay for the enrichment classes or summer camp. In calendar year 2018 and calendar year 2019, Ms. Havemann earned at least \$12,000.00 each year from teaching enrichment classes and/or summer camp. Ms. Havemann had signed a 12-month contract to work for the employer from July 1, 2019 through June 30, 2020 (the 2019-2020 school year).

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. In mid-March 2020, the employer closed for a few days and then began offering remote instruction. The employer offered remote instruction from mid-March 2020 through May 29, 2020, the end of the 2019-2020 school year. The employer also stopped offering enrichment classes in mid-March 2020 due to the COVID-19 pandemic but continued to pay Ms. Havemann her usual pay per her teaching contract from mid-March 2020 through June 30, 2020.

In early April 2020, the employer sent Ms. Havemann a 12-month contract to work for the employer from July 1, 2020 through June 30, 2021 (the 2020-2021 school year). Ms. Havemann signed the contract. But Ms. Havemann was concerned that she may not have a job in the 2020-2021 school year because student enrollment was down due to the pandemic and the contract provides that her employment could be terminated based on low student enrollment. So, Ms. Havemann applied for federal Pandemic Unemployment Assistance (PUA) benefits on April 29, 2020.

PUA benefits were federal UI benefits authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and extended by the Continued Assistance for Unemployed Workers Act of 2020 and the American Rescue Act of 2021 for any covered individual who was unemployed, partially unemployed, or unable to work due to the COVID-19 pandemic, and who was not eligible for REGULAR (state) UI benefits, Extended Benefits or Pandemic Emergency Unemployment Compensation (PEUC) benefits from January 27, 2020 through September 6, 2021. Governor Reynolds ended Iowa's participation in federal pandemic-related UI benefit programs, including the PUA program, effective June 12, 2021. So, the PUA eligibility period in Iowa was January 27, 2020 through June 12, 2021.

Ms. Havemann filed her initial REGULAR (state) UI claim the next day, Thursday, April 30, 2020. The effective date of Ms. Havemann's UI claim is Sunday, April 26, 2020, the Sunday of the week she filed her claim. Ms. Havemann filed her PUA claim and her REGULAR (state) UI claim because she was receiving less income due to the employer no longer offering enrichment classes. IWD set her weekly UI benefit amount as \$500.00. The employer was closed Monday, November 23, 2020 through Friday, November 27, 2020 for Thanksgiving Break. The employer paid Ms. Havemann her usual pay per her teaching contract from July 1, 2020 through June 30, 2021.

On April 30, 2020, Tammy Hoffman, a gaming representative with the Iowa Racing and Gaming Commission who was working as a subcontractor for IWD, sent Ms. Havemann an email asking Ms. Havemann to provide proper proof of her income for her PUA application. Ms. Havemann agreed to do so. That same day, Ms. Havemann told Ms. Hoffman via email that she had filed a REGULAR (state) UI claim because she thought she had to, and asked Ms. Hoffman if she had done the wrong thing. Ms. Havemann and Ms. Hoffman spoke on the phone that day. Ms. Havemann explained that she was filing her UI claim only because her enrichment pay was

reduced. Ms. Hoffman told Ms. Havemann that she only needed to report her pay for enrichment classes when she filed her weekly UI claims.

On May 2, 2020, Ms. Havemann provided proof of her income for her PUA application to Ms. Hoffman. Ms. Havemann followed up with Ms. Hoffman on May 5, 2020. Ms. Hoffman replied that Ms. Havemann's income was verified, and her PUA application would be moved along. Over two years and nine months later, on February 21, 2023, IWD denied Ms. Havemann PUA benefits because IWD concluded that her employment was not covered under the CARES Act.

This appeal is limited to the time period November 22-28, 2020. This is because IWD issued a different decision, the January 19, 2023 (reference 06) UI decision, addressing Ms. Havemann's eligibility for REGULAR (state) UI benefits as of November 29, 2020 in connection with this employer.

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.

Iowa Admin. Code r. 871-24.51(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.

Iowa Admin. Code r. 871-24.52(6) provides:

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 nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Ms. Havemann is not eligible for UI benefits that are based on her school employment the week of November 22-28, 2020, a customary holiday recess. Ms. Havemann worked as a full-time teacher during the 2019-2020 school year. Ms. Havemann had reasonable assurance of continued similar employment with the employer for the 2020-2021 school year, including immediately after the Thanksgiving Break. The employer's account shall not be charged for benefits for the week of November 22-28, 2020.

DECISION:

The January 19, 2023 (reference 05) UI decision is AFFIRMED. Due to the customary vacation or holiday recess disqualification, Ms. Havemann is not eligible for UI benefits that are based on her school employment for the week of November 22-28, 2020. The employer's account shall not be charged for benefits for this week.



Daniel Zeno
Administrative Law Judge

March 2, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.