

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRACIE N PUGH
Claimant

APPEAL 16A-UI-08045-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 12/27/15
Claimant: Appellant (2)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 22, 2016, (reference 06) unemployment insurance decision that allowed benefits, but removed wages from her claim. After due notice was issued, a telephone conference hearing was held on August 12, 2016. Claimant participated. Employer participated through Cathy McKay. Employer's Exhibit 1 was received.

ISSUE:

Does 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: The claimant was employed as a substitute teacher for employer beginning March 23, 2016 until summer break commenced on June 5, 2016. Claimant was hired to work on-call or as needed when work was available. Claimant remains on the substitute teacher list for the 2016-2017 school year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does have reasonable assurance of returning to work the following academic term or year.

Iowa Code § 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 § 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. 871-24.51(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(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 § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Claimant remains on the substitute teacher list. Thus, she does have reasonable assurance of continued employment. Furthermore, claimant does not have sufficient non-school wage credits remaining on the claim to qualify for benefits under Iowa Code § 96.4(4). The only wage credits remaining on claimant's claim are from a similar position she held with the Urbandale Community School District.

Additionally, because she remains on the substitute list, claimant is not considered able or available for work under the law. Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. . . .

Iowa Admin. Code r. 871-24.22(2)i(2) provides:

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since,

under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 between contracts or terms and during customary and established periods of holiday recesses 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.

Here, claimant has reasonable assurance that she will perform service as a substitute teacher in the period immediately following the summer break. Thus, she is not considered available for work and is not eligible for benefits between academic years or terms.

DECISION:

The July 22, 2016, (reference 06) unemployment insurance decision is reversed. The claimant does have reasonable assurance of returning to work the following academic year, and she is not eligible for benefits between academic terms. Benefits are denied effective June 5, 2016.

Christine A. Louis
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Decision Dated and Mailed

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