

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THERESA J DUTCHUK
Claimant

DES MOINES AREA COMM COLLEGE
Employer

APPEAL 20A-UI-05317-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2R)

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The claimant/appellant, Theresa J. Dutchuk, filed an appeal from the May 29, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2020. The claimant participated personally. The employer, Des Moines Area Community College, participated through Kay Riggoero.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant have reasonable assurance of continued employment in the next school term or year?

Is the claimant overpaid benefits?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment November 2, 2018. She works part-time as an adjunct instructor teaching English Language Learners (ELL). She also tutors part-time through the school.

During the 2018-2019 school year, the claimant taught in the fall, spring and summer terms. During the 2019-2020 school year, the claimant taught in the fall, spring and summer terms. Her classes were moved to online classes from March 30- June 25 due to COVID-19. She has not been able to perform tutoring, as the school requires it be done face-to-face.

The claimant has typically taught two classes per term. The claimant has not been assigned to teach for the fall semester beginning August 31, 2020. She will not learn if she's teaching any classes until 1-2 weeks before classes start.

In addition to working for this employer, the claimant works part-time as an independent contractor delivering gift baskets.

Despite being denied benefits after the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their claims were pending due to the backlog caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending the initial decision. The administrative record shows, claimant filed for and received a total of \$2,576.00 in unemployment insurance benefits for the weeks between March 29, 2020 and May 23, 2020. Claimant did not report wages earned with Des Moines Area Community College between March 29 - May 23, 2020. During this time, claimant was teaching but not tutoring through the employer.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$4,800.00 in federal benefits for the eight-week period ending May 23, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does not have reasonable assurance.

Iowa law provides that a claimant who has wage credits earned through service in an instructional, research, or principal administrative capacity in an educational institution is only eligible for benefits based on those wage credits during the period between two successive academic terms if the claimant has a contract or "reasonable assurance" that the claimant will perform services in any such capacity for any educational institution for both such academic years or both such terms. Code § 96.4-5-a. "Reasonable assurance" is any written, verbal, or implied agreement that the claimant can expect to perform services for the employer in the same or similar capacity in the next year or term which is not substantially less in economic terms and conditions than the service performed during the prior academic year or term, where that understanding has been communicated to the claimant. Rule 871 IAC 24.51(6).

The employer is an "educational institution." Rule 871 IAC 24.51(1). The claimant is between academic years. His situation is similar to that found in the case of *Merged Area VII v. IDJS*, 367 N.W.2d 272, 274 (Iowa App. 1985) which also involved a community college which held a summer session. There the claimant did no work over the summer, even though there was a summer session, yet the Court still denied benefits because of the "summer vacation." *Id.* at 275.

The claimant worked for the employer during the spring and summer 2020 academic terms and it is unknown if she will work for the employer during the fall 2020 academic term. The two academic semesters are successive terms; a "term" "is defined as either of the two periods into which the yearly period of instruction is normally divided, commonly referred to as a semester." Rule 871 IAC 24.51(7)b. Therefore, the claimant is between successive terms with an educational institution. She does not have reasonable assurance that she will continue performing services in the same or similar capacity in the next regular term. She is therefore eligible to receive unemployment insurance benefits, provided she meets all other requirements.

The crux of the claimant's unemployment with this employer is not whether she has reasonable assurance to return in the fall, but rather the impact of her hours being reduced due not tutoring in the spring and summer terms. Her hours were reduced because the employer as a school was impacted by COVID-19. For this reason, the issue of whether the claimant is partially unemployed is remanded to Benefits Bureau for an initial investigation and decision.

In addition, the claimant's unrecorded wages in conjunction with her weekly continued claims for the period of March 29, 2020 through May 23, 2020 are also remanded to the Benefits Bureau for an adjustment on weekly reported wages and possible overpayment.

Because the claimant is eligible for benefits, the issues of overpayment is moot at this time.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because the claimant is allowed regular unemployment insurance benefits, she is also eligible for FPUC, provided she is otherwise eligible. The employer is not charged for federal benefits.

DECISION:

The representative's May 29, 2020 initial decision (reference 02) is reversed. The claimant does not have reasonable assurance. The claimant is eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer. Benefits are allowed, provided she is otherwise eligible. Because the claimant is allowed regular unemployment insurance benefits, she is also eligible for FPUC, provided she is otherwise eligible

REMAND: The following issues are remanded to the Benefits Bureau for an initial investigation:

1. The issue of whether the claimant is partially unemployed effective March 29, 2020 due to the reduction of hours in tutoring with Des Moines Area Community College.
2. The claimant's unrecorded wages in conjunction with her weekly continued claims for the period of March 29, 2020 through May 23, 2020 are also remanded to the Benefits Bureau for an adjustment on weekly reported wages and possible overpayment.



Jennifer L. Beckman
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July 20, 2020
Decision Dated and Mailed

jlb/scn