

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULIE A NORIEGA
Claimant

APPEAL 21A-UI-15353-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CLEAR CREEK AMANA COMM SCHOOL
DIS**
Employer

**OC: 05/30/21
Claimant: Respondent (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers

STATEMENT OF THE CASE:

The employer/appellant, Clear Creek Amana Community School District, filed an appeal from the July 6, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2021. The claimant, Julie A. Noriega, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Catherine Westfall.

The administrative law judge took official notice of the administrative records. 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:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?
Is the claimant a substitute teacher or on –call worker?
Did the claimant have reasonable assurance of continued employment in the next school year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for this employer in a substitute capacity only. The position is for the academic school year only. Employer’s school year for 2020-2021 ended on May 28, 2021. Claimant last worked on May 14, 2021.

Prior to the school year, claimant was informed verbally she would remain on the substitute teaching list for the 2021-2022 school year, which began August 23, 2021.

Claimant does have other non-educational institution wages which may make her monetarily eligible for regular unemployment insurance benefits on their own.

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) 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.

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

(6) 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 non-school 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.**

(emphasis added).

In this case, the claimant did have reasonable assurance of employment for the 2021 – 2022 school year when the employer verbally offered her employment prior to the school year ending. Therefore, claimant cannot use the wage credits earned from this employer for the purposes of unemployment insurance benefit monetary eligibility.

However, claimant has other non-educational institution wage credits in the base period and may be monetarily eligible for benefits based upon the wage credits in the base period earned with that other employer. This employer will not be charged for benefits paid for weeks claimed between successive years or terms.

The issue of whether claimant is monetarily eligible for benefits based upon her non-educational institution wage credits and benefits are allowed on that basis is remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The July 6 2021 (reference 01) decision is modified in favor of the employer/appellant. The claimant had reasonable assurance of returning to work the following academic year or term with this educational employer. This employer will not be charged for benefits paid for weeks claimed between successive years or terms. Claimant has other non-educational wages in her base period and may be monetarily eligible for benefits based on those wages alone.

REMAND:

The issue of whether claimant is monetarily eligible for benefits based upon her non-educational institution wage credits and benefits are allowed on that basis is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
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August 30, 2021
Decision Dated and Mailed

jlb/ol