

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DONITA R SHOVEIN
Claimant

MASON CITY COMMUNITY SCHOOL DIST
Employer

APPEAL 19R-UI-01462-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/17/18
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 8, 2019, (reference 05) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 11, 2019. Claimant participated personally. Employer participated by Tom Przcimski, Human Resources Director. Employer's Exhibits 1-2 and Claimant's Exhibits A-D were admitted into evidence.

ISSUES:

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

The issue in this matter is whether claimant is able and available for work?

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 the Mason City Community School District during the 2018 – 2019, school year. Claimant was hired to work on-call or as needed when work was available. Claimant has other regular non-educational institution employment wage credits in the base period.

Claimant stopped accepting substitute teaching work from the employer sometime in 2018 because most of the substitute teaching work she was offered was in special education classrooms and claimant was not interested in doing that type of work. Claimant is semi-retired and she is receiving social security benefits. Claimant is not seeking full-time work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did have reasonable assurance of returning to work the following academic term or year. The claimant also has other non-educational institution wages in the base period, but she is not seeking full-time work, nor is she willing to accept full time work. Therefore, the claimant is not able and available for work.

Iowa Code section 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. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 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 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.

Iowa Code section 96.4(5)b 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:

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.

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.

The U.S. DOL issued Program Letter No. 5-17 on December 22, 2016, that sets out guidance for the department interpretation of the Federal Unemployment Tax Act (FUTA) as it applies to institutions of higher education and part-time, adjunct or contingent faculty. It sets out three factors required for a reasonable assurance determination. First, a genuine offer of employment from a person with authority may be written, oral or implied. Second, the employment offered must be in the same capacity (e.g. professional or non-professional) as held in the previous term. Third, the economic conditions offered may not be “considerably less” than in the prior term. The letter defined “considerably less” as not earning at least 90 percent of the amount earned in the earlier academic year or term. It goes on to examine whether contingencies within the offer are within the employer’s control as a means to determine if the claimant has reasonable assurance of continued employment. Circumstances such as enrollment, funding and seniority are not considered to be within the employer’s control. The letter requires analysis of the “totality of circumstances” to determine whether it is “highly probable” that there is a job available for claimant the following academic term. It also requires weight be given to the contingency of the offer and if it is “highly probable” that the contingency will be met. https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8999

Where a claimant did not work over the summer for a community college which held a summer session, the Court still denied benefits because of the “summer vacation.” *Merged Area VII v. Iowa Dep’t of Job Serv.*, 367 N.W.2d 272, 274, 275 (Iowa Ct. App. 1985).

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.

Iowa Admin. Code r. 871-24.52(10) states: Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2)“i”(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)“i”(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)“i”(3) if they are:

- (1) Able and available for work.
- (2) Making an earnest and active search for work each week.
- (3) Placing no restrictions on their employability.
- (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

Claimant is not seeking full-time work, and she has placed restrictions on her employability because she is semi-retired and is receiving social security benefits. Claimant does not want to work too many hours because she believes those wages might cause her to lose social security benefits.

DECISION:

The January 8, 2019, (reference 05) unemployment insurance decision is affirmed. The claimant did have reasonable assurance of returning to work the following academic year or term. Claimant is not able and available for work because she has placed restrictions on her employability. Benefits are denied.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn