

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANE WEYMILLER
Claimant

**EASTERN ALLAMAKEE COMMUNITY
SCHOOL DISTRICT**
Employer

APPEAL 21A-UI-03718-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Admin. Code r. 871-24.51(6) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant/appellant, Diane Weymiller, filed an appeal from the January 21, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits effective January 21, 2021. The parties were properly notified about the hearing. A telephone hearing was held on May 13, 2021. The claimant participated. The employer participated through witnesses Marian Verdon and Dale Crozier. Claimant’s exhibits A, B and C were admitted into the record.

The administrative law judge took official notice of the administrative records, including wage history. 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.

ISSUE: Is the claimant eligible for benefits between academic years or terms?

FINDINGS OF FACT:

Claimant established a claim for unemployment insurance benefits with an effective date of April 12, 2020. Claimant was employed as a part-time bus driver for the employer beginning in 2012. Claimant is still employed by the employer part-time as a bus driver, working between two and five routes per day. The bus driver contract runs during the academic year. In addition to the part-time bus driver contract, there is work available for the claimant on an as-needed basis for school activities, such as driving teams to and from sporting events. This work is not guaranteed. There were fewer of such opportunities available in the summer of 2020 due to the pandemic.

On March 16, 2020, Governor Reynolds issued a proclamation closing K-12 school statewide due to the emerging COVID-19 pandemic. Claimant was unemployed due to the pandemic-related shutdown. Claimant received her regular contracted pay from the employer during the school shut-down.

Claimant received her contract in May 2020, for the 2020-2021 academic school year, which began in August 2020. Claimant had reasonable assurance to return to her employment for 2020-2021 year in a similar capacity as she had been employed for the prior year. Claimant did return to work as scheduled and performed work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the January 21, 2021 (reference 01) unemployment insurance decision that denied benefits as of April 12, 2020 based on a finding claimant's employment occurred during a vacation or holiday recess and she had reasonable assurance of employment is **AFFIRMED**.

Iowa Code section 96.4(5)a provides:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.1A, 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. 871-24.52(6) provides:

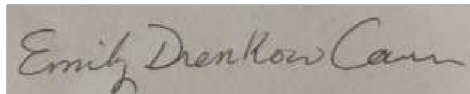
Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Employer is a nonprofit organization or government entity; claimant performed services in the prior academic year; and she had reasonable assurance she would perform services in the subsequent academic year. Therefore, benefits based on her service with employer cannot be paid to claimant for any week of unemployment which begins during the period between two successive academic years or terms.

The as-needed work, driving for school activities, was not part of claimant's employment contract and was not guaranteed. While there was less of such work available in 2020 due to the pandemic, that is the nature of as-needed or on-call work. Claimant does not have other non-educational institution wage credits in the base period.

DECISION:

The January 21, 2021 (reference 01) unemployment insurance decision that denied benefits as of April 12, 2020 based on a finding claimant's employment occurred during a vacation or holiday recess and she had reasonable assurance of employment is AFFIRMED.



Emily Drenkow Carr
Administrative Law Judge
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May 19, 2021
Decision Dated and Mailed

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