

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TODD J CHEEVER**  
Claimant

**DUBUQUE COMMUNITY SCHOOL  
DISTRICT**  
Employer

**APPEAL 20A-UI-09682-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

Todd Cheever (claimant) appealed a representative's July 10, 2020, decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Dubuque Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 28, 2020. The claimant participated personally. The employer participated by Mindy Klein, Payroll Specialist.

Exhibit D-1 was received into evidence. The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issue is whether the appeal was filed in a timely manner, whether the claimant is between successive terms with an educational institution and had reasonable assurance of employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an educational institution. The claimant was hired on August 23, 2017, as a part-time, on-call substitute teacher. The claimant knew the position was on-call. He understood he would not work between academic terms for the employer when he was hired. After April 2020, the claimant stopped taking the offered assignments with the employer in order to work a full-time long-term substitute position for Western Dubuque Community School District. The claimant told the employer he would not accept the assignments but the employer said it would keep him on the substitute list. The claimant accepted a full-time paraprofessional job with Western Dubuque Community School District starting on August 13, 2020.

A disqualification decision was mailed to the claimant's last known address of record on July 10, 2020. The claimant did not receive the decision. The claimant's benefits stopped after July 4,

2020. He contacted the agency in August 2020, because he thought the State of Iowa ran out of money. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 20, 2020.

The first week in August 2020, a representative explained the disqualification to the claimant, the need to file an appeal, and how to file an appeal. The claimant did not file an appeal because he could not figure out the process. After about a week, the claimant called the agency again. The representative explained the process and the claimant filed an appeal on August 14, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2020. His weekly benefit amount was determined to be \$385.00. The claimant received benefits of \$385.00 per week from June 6, 2020, to the week ending July 4, 2020. This is a total of \$1,925.00 in state unemployment insurance benefits after the separation from employment. He also received \$3,000.00 in Federal Pandemic Unemployment Compensation for the five-week period ending July 4, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v.*

*Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant's appeal shall be accepted as timely.

The next issue is whether the claimant is eligible to receive unemployment insurance benefits.

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. 871-24.52(10)e provides:

(10) Substitute teachers.

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).

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. 871-24.22(2)i(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

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 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(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.

The employer is an academic institution. The claimant was employed as an on-call substitute and work was available. The employer gave the claimant reasonable assurance that his employment would continue following the employer's established and customary vacation periods. As such, the claimant is denied unemployment insurance benefits because he is not eligible for benefits between successive terms.

The claimant told the employer he would accept no further assignments after April 2020. The issue of the claimant's separation from employment is remanded for determination.

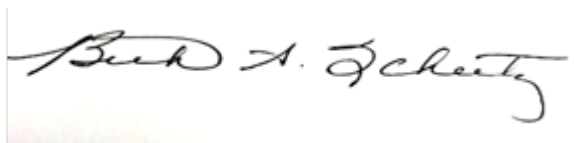
Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**DECISION:**

The July 10, 2020, reference 04, decision is affirmed. The appeal in this case was timely. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer.

The claimant told the employer he would accept no further assignments after April 2020. The issue of the claimant's separation from employment is remanded for determination.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



---

Beth A. Scheetz  
Administrative Law Judge

September 29, 2020  
Decision Dated and Mailed

bas/scn