

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHARI E SCHURG

Claimant

APPEAL 21A-UI-04238-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMMETSBURG-EMMETSBURG CATHOLIC

Employer

OC: 03/15/20

Claimant: Appellant (4)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Employer Contributions and Reimbursements

STATEMENT OF THE CASE:

On January 29, 2021, the claimant, Shari E. Schurg, filed an appeal from the January 20, 2021 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed and was therefore ineligible for benefits effective May 24, 2020. The parties were properly notified of the hearing. A telephonic hearing was held on Thursday, April 8, 2021. The claimant, Shari E. Schurg, participated. The employer, Emmetsburg—Emmetsburg Catholic, participated through witness Jean Hyslop, Principal; and hearing representative Paul Jahnke represented the employer. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Was claimant Shari E. Schurg totally, partially, or temporarily unemployed effective May 24, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with employer Emmetsburg—Emmetsburg Catholic as a part-time teacher's aide on November 18, 2013. Claimant remains employed with the employer in this capacity.

Effective March 16, 2020, the employer was required to close its schools due to the COVID-19 pandemic. Governor Reynolds had issued a proclamation closing K-12 schools in Iowa, and there was limited work available for claimant once the school was closed. Claimant took all available hours, cleaning the school and preparing it for the coming year. Claimant last reported wages working for the employer for the week ending June 20, 2020.

Between June 21, 2020, and August 8, 2020, claimant worked no hours and reported no wages. During this time, claimant had reasonable assurance of continued employment in the coming year with this employer. Claimant had planned to work at Ingham Okoboji Bible Camp over the summer, but the camp was closed due to COVID-19.

Claimant returned to work for the employer beginning with the week of August 9-August 15. She reported wages and received partial benefits that week and for the subsequent two weeks. The following two weeks, the claimant reported wages in excess of her weekly benefit amount plus fifteen dollars and received no benefits. Claimant stopped filing for benefits effective September 13, 2020.

Claimant is listed as Group Code 8, which currently indicates that she is unemployed because of the pandemic. Under this group code, claimant is still attached to the employer but is not able to work due to the pandemic, and the employer is relieved of any charges.

The administrative record indicates claimant has not applied for PUA benefits to date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the underlying decision is modified in favor of claimant/appellant Shari E. Schurg. Claimant is eligible for benefits until the week ending June 20, 2020; and again effective August 15, 2020. Claimant is not eligible for regular unemployment insurance benefits between June 21 and August 14, 2020.

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.

(emphasis added).

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.

Claimant had reasonable assurance that her employment would continue following the employer's established and customary vacation period. Therefore, she cannot be eligible for

regular unemployment insurance benefits during her summer break period when no work was available with the employer. Accordingly, benefits are denied.

DECISION:

The January 20, 2021 (reference 02) unemployment insurance decision is modified in favor of claimant/appellant Shari E. Schurg. Claimant had reasonable assurance of continued employment, and benefits are withheld from June 21, 2020, through August 14, 2020.

Claimant is otherwise eligible for regular unemployment insurance benefits. As claimant is in Group Code 8, the employer has not been charged.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Fax (515)478-3528

April 12, 2021
Decision Dated and Mailed

lj/scn

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 or have been unemployed since December 1, 2020, for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.