

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STANLEY L WILCOX
Claimant

APPEAL 20R-UI-10744-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA SCHOOL FOR THE DEAF
Employer

OC: 04/05/20
Claimant: Respondent (1)

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On June 8, 2020, Iowa School for the Deaf (employer) filed an appeal from the May 28, 2020, reference 01, unemployment insurance decision that allowed benefits based upon the determination Stanley L. Wilcox (claimant) was on a short-term layoff. After due notice was issued, a telephone hearing was held on July 23, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Deb LeHeup, Director of Human Resources. The claimant filed an appeal with the Employment Appeal Board on August 19, 2020 and the matter was remanded to give the claimant an opportunity to participate. After due notice was issued, a telephone hearing was held on October 20, 2020. Claimant participated and testified. Employer participated through LeHeup.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective April 5, 2020?
Does the claimant have reasonable assurance of continued employment in the next school term or year?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time driver for the employer during the 2019 – 2020, school year. The last day claimant worked was March 15, 2020, when the school closed as a result of the COVID-19 pandemic. The school year ended on June 5, 2020. Claimant did not hear whether or not he would return for the 2020-2021 school year until sometimes in late-July or early August. The employer conceded things were very uncertain this year because of the

COVID 19 pandemic. The claimant did return to work on August 21, 2020, when the school year began.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not have reasonable assurance of returning to work the following academic term or year. Benefits are allowed, provided he is otherwise eligible.

Iowa Code section 96.4(5) provides, in relevant part:

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.

...

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.

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 employer has to prove that the claimant had reasonable assurance of employment in the 2020-2021 school year. Claimant did not hear from the employer about the 2020-2021 school year at all until late-July/early-August 2020. The employer did not establish when or if the claimant had reasonable assurance before the start of the subsequent term. As a result, the claimant was unemployed over the summer break. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The May 28, 2020, reference 01, unemployment insurance decision is affirmed. The claimant did not have reasonable assurance of returning to work the following academic year or term. Benefits are allowed, provided he is otherwise eligible.



Nicole Merrill
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

nm/scn