

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY CRUM
Claimant

APPEAL 21R-UI-16045-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**STORM LAKE COMMUNITY SCHOOL
DISTRICT**
Employer

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

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 4, 2021, (reference 02) unemployment insurance decision that denied benefits effective May 24, 2020. Iowa Workforce Development mailed a notice of hearing to claimant's last address of record. The hearing was scheduled for May 19, 2021, at 3:00 p.m. Claimant did not provide a telephone number to the Appeals Bureau prior to the scheduled hearing. No hearing was held and the appeal was dismissed. The claimant appealed to the Employment Appeal Board (EAB) who remanded the matter for a new hearing.

After proper notice, a telephone hearing was held on October 1, 2021. The hearing was held together with Appeal 21R-UI-16046-JC-T. The claimant participated personally. The employer participated through Trudy Pedersen. Official notice of the administrative record was taken.

ISSUE:

The issue is whether the claimant is between successive terms with an educational institution and had reasonable assurance of employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established her claim for unemployment insurance benefits with an effective date of April 5, 2020. Claimant was a substitute teacher for this employer from 2017 until July 21, 2021. She was not guaranteed shifts or hours, and there is no summer work available. She worked only during the academic school year. The school year ended early in spring 2020 due to the COVID-19 pandemic instead of May 22, 2020. Claimant knew she would return in the fall term and on the active substitute list unless she requested to be taken off. Fall semester began on August 26, 2020.

Claimant remained on the substitute teaching list each year until she tendered her resignation effective July 21, 2021 to concentrate on self-employment. (She owns a coffee shop.) She has no other non-educational wages in her base period. Claimant also substitute taught for two other school districts.

The initial decision denied benefits effective May 24, 2020, concluding claimant was between successive terms with an educational institution and had reasonable assurance to return.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for unemployment insurance benefits effective May 24, 2020.

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 Code section 96.4(5)c 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:

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.

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.

Based on the evidence presented, the administrative law judge concludes that claimant had reasonable assurance that her employment would continue following the employer's customary summer break period. Claimant has no other non-educational institution wage credits in the base period. As such, benefits are denied.

DECISION:

The March 4, 2021 (reference 02) unemployment insurance decision is affirmed. The claimant does have reasonable assurance of returning to work following the vacation period or holiday recess. Benefits are denied.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Des Moines, Iowa 50319-0209
Fax 515-478-3528

October 13, 2021

Decision Dated and Mailed

jlb/mn

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 unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>