

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LINDSEY A RUSSELL

Claimant

APPEAL NO. 12A-UI-13966-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETTENDORF COMMUNITY SCHOOL

Employer

OC: 05/27/12

Claimant: Appellant (4)

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Lindsey Russell and the employer filed a timely and joint appeal from the November 6, 2012, reference 01, decision that denied benefits to Ms. Russell effective May 27, 2012 based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on December 21, 2012. Ms. Russell participated. Maxine McEnany, Director of Finance, represented the employer. Exhibits One through Eight were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant. The parties waived formal notice on the issue of whether Ms. Russell has been overpaid unemployment insurance benefits.

ISSUE:

Whether Ms. Russell is disqualified, effective May 27, 2012, for unemployment insurance benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). The administrative law judge concludes that Ms. Russell did not receive reasonable assurance of continued employment until on or shortly after June 21, 2012 and that Ms. Russell is disqualified for benefits effective June 24, 2012 under the between-academic-terms disqualification provision set forth in Iowa Code section 96.4(5).

Whether Ms. Russell has been overpaid unemployment insurance benefits. The administrative law judge concludes that Ms. Russell is overpaid \$1,687.00 in benefits for the seven-week period of June 24, 2012 through August 11, 2012.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lindsey Russell began her employment with the Bettendorf Community School District in September 2011 and continues in the employment at this time. During the 2011-2012 academic year, Ms. Russell worked as a part-time paraprofessional. Ms. Russell assisted special education students' with their studies. Ms. Russell usually worked 5.75 hours per day. The Bettendorf High School Principal and Associate Principals functioned as Ms. Russell's supervisors. The last day of the 2011-2012 academic year was May 24, 2012.

Ms. Russell understood at the time of hire that the District would have no work for her during the summer months between academic years. In mid-May 2012, Ms. Russell became concerned about whether she would have employment with the District during the 2012-2013 academic year. Up to that point, Ms. Russell had not received anything in writing or otherwise assuring her that the same or similar position would be available to her during the 2012-2013 academic year. In mid-May 2012, Ms. Russell went to an associate principal with her concern about future employment. The associate principal told Ms. Russell that the District sends out Letters of Assignment over the summer, that he hoped she got one, but that he did not know for certain whether there would be work for her during the 2012-2013 academic year.

After Ms. Russell performed the last day of work the employer had for her in the 2011-2012 academic year, she established a claim for unemployment insurance benefits that was effective May 27, 2012. Ms. Russell's weekly benefit amount was set at \$241.00. Ms. Russell received \$241.00 in unemployment insurance benefits for each of the 11 weeks between May 27, 2012 and August 11, 2012.

On June 21, 2012, the District mailed to Ms. Russell a Letter of Assignment to confirm that the District would indeed have the same or similar employment for Ms. Russell during the 2012-2013 academic year. Ms. Russell received the Letter of Assignment during the same week it was mailed.

The District's 2012-2013 academic year started on August 15, 2012. Ms. Russell participated in in-service scheduled for August 10 and 14. When school started, Ms. Russell returned to her duties as a paraprofessional assigned to assist special education students with their studies.

On June 8, 2012, Workforce Development had mailed a notice of claim concerning Ms. Russell's claim for benefits to the Bettendorf Community School District. The notice of claim contained a June 18, 2012 deadline for the employer's response. On June 11, 2012, the employer faxed its protest to Workforce Development and asserted on the protest that Ms. Russell was still employed, but between academic terms. The employer has provided a fax transmission record indicating that the one-page protest was successfully faxed to the Unemployment Insurance Service Center on June 11, 2012. Workforce Development Claims Division misplaced the one-page protest. Neither Workforce Development nor the employer took any further action on the protest until October 22, 2012, when the employer contested a charge to its account for benefits paid to Ms. Russell. On October 22, the employer provided the Workforce Development Tax Bureau with proof of the June 11, 2012 protest. The Tax Bureau referred the matter for a fact-finding interview. Ms. Russell and the employer each then participated in the fact-finding interview that led to the November 6, 2012, reference 01, decision.

REASONING AND CONCLUSIONS OF LAW:

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

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.

Obviously, Bettendorf Community School District and the Bettendorf High School are educational institutions. Ms. Russell was a professional employee for purposes of Iowa Code

section 96.4(5)(a) insofar as her duties involved assisting students with participating in the educational curricula. Ms. Russell and the District were between academic terms from May 25, 2012 through August 14, 2012. Prior to June 21, 2012, Ms. Russell did not have reasonable assurance that she would perform the same or similar work during the 2012-2013 academic year as she had performed in the 2011-2012 academic year. Prior to Thursday, June 21, Ms. Russell had only a statement from the associate principal that he *hoped* there would be further work for Ms. Russell, that Letters of Assignment would go out over the summer, but that there was no guarantee that the same or similar work would be available to Ms. Russell. By the end of the week that ended June 23, 2012, Ms. Russell had received her Letter of Assignment and thereby had reasonable assurance that she would return to the same or similar work at the start of the 2012-2013 academic year.

Effective the week that started June 24, 2012, Ms. Russell was disqualified for unemployment insurance benefits based on the between-academic terms disqualification contained in Iowa Code section 96.4(5). However, for the period of May 27, 2012 through the benefit week that ended June 23, 2012, Ms. Russell was not disqualified for benefits under the between-academic-terms disqualification provision because she did not have reasonable assurance of further employment until the end of the week that ended June 23, 2012. Ms. Russell is eligible for benefits for the period of May 27, 2012 through June 23, 2012, provided she is otherwise eligible. The employer's account may be assessed for those benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because Ms. Russell was disqualified for benefits for the period of June 24, 2012 through the benefit week that ended August 11, 2012, the benefits she received for that period constitute an overpayment of benefits that she must repay to Workforce Development. Ms. Russell is overpaid \$1,687.00 in benefits for the seven-week period of June 24, 2012 through August 11, 2012.

DECISION:

The claims representative's November 6, 2012, reference 01, decision is modified as follows. For the period of May 27, 2012 through the benefit week that ended June 23, 2012, the claimant was not disqualified for benefits under the between-academic-terms disqualification provision. The claimant is eligible for benefits for the period of May 27, 2012 through June 23, 2012, provided she is otherwise eligible. The employer's account may be assessed for benefits paid for the period of May 27, 2012 through June 23, 2012.

Effective June 24, 2012, and through the benefit week that ended August 11, 2012, the claimant was disqualified for unemployment insurance benefits based on the between-academic terms disqualification contained in Iowa Code section 96.4(5). The employer's account will not be charged for benefits paid for the period of June 24, 2012 through August 11, 2012.

The claimant is overpaid \$1,687.00 in benefits for the seven-week period of June 24, 2012 through August 11, 2012. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css