

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY SPEIR

Claimant

APPEAL NO. 11A-UI-11553-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FORT MADISON COMM SCHOOL DIST

Employer

OC: 06/12/11

Claimant: Respondent (4/R)

Iowa Code § 96.4-5 - Reasonable Assurance/Educational Institution

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Fort Madison Community School District (employer) appealed an unemployment insurance decision dated August 29, 2011, reference 01, which held that Jerry Speir (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 28, 2011. The claimant submitted written documentation in lieu of participation. The employer participated through Cindy Macomber, payroll administrator. Employer's Exhibit One and Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant has reasonable assurance of continuing employment in the next academic term or year.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time teacher for the 2010/2011 school year from August 8, 2010 through July 15, 2011. He admitted in writing that his last paycheck was on July 15, 2011.

The employer sent the claimant a Notice and Recommendation to terminate his contract on April 8, 2011, which was to be effective at the end of the contract year. The claimant filed a claim for unemployment insurance benefits effective June 12, 2011 and filed weekly claims for the next ten weeks ending August 20, 2011. He reported no wages for the five-week period ending July 16, 2011 and received \$390.00 each week in unemployment insurance benefits each week.

The employer offered the claimant a new contract for the 2011/2012 school year on August 22, 2011 and he signed the contract that same date. The employer paid him back wages for all but one pay period.

The claimant filed a claim for unemployment insurance benefits effective June 12, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

871 IAC 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 claimant had been notified his contract for the next school year had been cancelled, but he was paid through July 15, 2011. He was offered a new contract on August 22, 2011 and signed the contract that same day. Consequently, the claimant did not have a reasonable assurance of reemployment in the same capacity for the successive term for the five-week period ending August 20, 2011. He qualifies for benefits during that same time frame, provided he is otherwise eligible. The claimant is disqualified thereafter.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a

particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated August 29, 2011, reference 01, is modified in favor of the appellant. The claimant qualifies for unemployment insurance benefits for the five-week period ending August 20, 2011, provided he is otherwise eligible. He is disqualified as of the week ending August 27, 2011. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw