

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTHA J DENTON
Claimant

APPEAL NO: 11A-UI-09318-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

**OC: 05/29/11
Claimant: Appellant (1)**

Section 96.4-5-b – Reasonable Assurance/Educational Institution

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 11, 2011, reference 01, that held she was not eligible for benefits effective May 29, 2011, because she had reasonable assurance of continuing employment between academic terms or years. A hearing was held on September 12, 2011. The claimant participated. Cathy McCay, Risk Manager, participated for the employer.

ISSUE:

Whether claimant has reasonable assurance of continuing employment between academic terms or years.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant was hired by the employer school as a substitute (associate) teacher aide on an as needed basis beginning August 23, 2010. The employer advised claimant her name is placed on a call system roll where she is called as needed. She had the right to accept or reject work, as available. She also has the right to have her name removed from the call list.

The claimant last worked on June 3, 2011 that was just before the school term ended on June 9. Her name remained on the employer call list and she did work one day in July 2011. Manager McKay notes the claimant is still considered a substitute employee, as she was called in and worked on August 30/31, and September 6/7, 2011. All of claimant's base period employment wage credits are earned from this employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

The administrative law judge concludes that the claimant is not eligible for unemployment benefits effective May 29, 2011, as she has a reasonable assurance of employment with the same employer (an educational institution) between academic terms.

The law does not permit the claimant and other similar workers to receive unemployment during the interim period where there is a reasonable assurance of continuing employment on the same basis. Claimant began employment as an on-call, substitute teacher, and she has remained on the employer call system from one school term to the next.

DECISION:

The department decision dated July 11, 2011, reference 01, is affirmed. The claimant is not eligible for benefits effective May 29, 2011 due to reasonable assurance.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs