

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARY E NORD
803 N 3RD ST
CLINTON IA 52732

IOWA EAST CENTRAL T R A I N
500 E 59TH ST
DAVENPORT IA 52807-2623

Appeal Number: 05O-UI-08674-S2T
OC: 06/12/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-5-b – Benefits During Successive Academic Terms

STATEMENT OF THE CASE:

Mary Nord (claimant) appealed a representative's July 7, 2005 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Iowa East Central T R A I N (employer). A hearing was held on September 8, 2005, following due notice pursuant to Remand Order of the Employment Appeal Board dated August 19, 2005. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The Findings of Fact set forth in the decision in appeal 05A-UI-07171-H2T are adopted and incorporated herein as if set forth at length.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is between successive terms with an educational institution. For the following reasons the administrative law judge concludes she is not.

Iowa Code section 96.4-5-a 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:

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.

871 IAC 24.52(7) provides:

(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

If the employer is a community action program which has head start as one of its components, the employer is not an educational institution and the between academic terms denial does not apply. In this case the employer is not an educational institution. It is a community action program that has head start as one of its components. Therefore, benefits are allowed to the claimant, provided she is otherwise eligible.

DECISION:

The representative's July 7, 2005 decision (reference 01) is reversed. The claimant is eligible to receive unemployment insurance benefits, provided she is otherwise eligible.

bas/pjs