

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

GARY P CULVER
1213 LELAND AVE
DES MOINES IA 50315

NORWALK COMMUNITY
SCHOOL DISTRICT
ATTN KATE BALDWIN
BUSINESS MANAGER
906 SCHOOL AVE
NORWALK IA 50211-1584

Appeal Number: 04A-UI-09935-RT
OC: 05/23/04 R: 02
Claimant: Appellant (1)

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 – Benefits Based on Service For an Educational Institution

STATEMENT OF THE CASE:

The claimant, Gary P. Culver, filed a timely appeal from an unemployment insurance decision dated September 10, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on October 6, 2004, with the claimant participating. Kate Baldwin, Business Manager, participated in the hearing for the employer, Norwalk Community School District. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This appeal was consolidated with appeal 04A-UI-09936-RT for the purposes of the hearing with the consent of the parties.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant was and still is employed by the employer as a regular route morning and afternoon bus driver, since January 28, 1983. Although the claimant does not work full-time hours, the employer considers the claimant full-time. In the 2003-2004 school year, the claimant provided such services as a bus driver. The school year ended on May 28, 2004. The claimant had no doubt in his mind that he would continue performing such services in the new or ensuing school year, 2004-2005. The claimant is a member of a collective bargaining unit and he was never notified under the collective bargaining contract of any termination of his contract with the employer. Collective bargaining negotiations were completed in May 2004 and the claimant fully expected to perform services in the new or ensuing school year. On June 25, 2004, the employer issued the claimant a letter confirming his employment indicating that his services would commence on August 19, 2004. This letter appears at Department Exhibit One. The claimant received this letter the end of June. The claimant never received any indication from the employer that he would not be returning to the employer and performing similar services in the new school year. The claimant in fact began performing similar services for the employer in the 2004-2005 school year on August 19, 2004 and is continuing to perform such services. The employer continued to pay the employer's share of the claimant's benefits over the summer of 2004. The claimant filed for unemployment insurance benefits effective May 23, 2004. In the claimant's base period, the claimant had earnings of only \$112.00 from other employers during his base period. The employer is a public educational institution.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant was still employed by an educational institution between two successive academic years or terms and had reasonable assurance and therefore would be ineligible to receive unemployment insurance benefits between the two successive academic years or terms. The claimant was employed by an educational institution between two successive academic years or terms and he had reasonable assurance and therefore he is ineligible to receive unemployment insurance benefits between the two successive academic years or terms.

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.

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 administrative law judge concludes that there is a preponderance of the evidence that the claimant was employed by an educational institution performing services as a regular route morning and afternoon bus driver. The claimant performed such services in the first academic year or term, 2003-2004 and had reasonable assurance that he would be performing similar services for the employer for the new or ensuing academic year or term, 2004-2005. When the 2003-2004 school year ended on May 28, 2004, the claimant had an implied agreement that he would be performing services in the same or similar capacity as a bus driver as he had in the prior academic year or term. The claimant himself testified that there was no doubt in his mind that he would go back to work as a bus driver performing the same services. The employer did or said nothing to the claimant to indicate that he would not be similarly employed in 2004-2005. The claimant is a member of a collective bargaining unit and received no notice of any termination of his contract with the employer. During the period between the two academic years or terms, 2003-2004 and 2004-2005, or the summer of 2004, the employer continued to pay its portion of the benefits for the claimant. Union negotiations were completed in May 2004. There was a delay in the actual contract. The contract or at least an offer of employment was made to the claimant by letter dated June 25, 2004 as shown at Department Exhibit One. The claimant received this at the end of June 2004. Clearly, the claimant had reasonable assurance upon receipt of this letter. The administrative law judge also concludes that the claimant had reasonable assurance prior to that time and, in fact, had reasonable assurance when the prior academic year or term, 2003-2004, ended on May 28, 2004. The administrative law judge does not believe that the delay in the contract or the letter dated June 25, 2004 was a delay for, or a failure of, reasonable assurance. Accordingly, the administrative law judge concludes that the claimant is ineligible to receive unemployment insurance benefits for the period between the two academic years or terms. The administrative law judge specifically notes that the claimant is now performing similar services for the employer as he did in the prior academic year or term. The administrative law judge further notes that the claimant had earnings from other employers of only \$112.00 in his base period and this is insufficient to entitle him to unemployment insurance benefits based on non-school related wage credits pursuant to 871 IAC 24.52(6). Unemployment insurance benefits are denied to the claimant during the period between the two successive academic years or terms from May 28, 2004 through August 19, 2004.

The claimant testified that he called Iowa Workforce Development and spoke to three different representatives. The claimant told the representative that he was not getting laid off and that

he was not losing his job, but indicated that his hours would be reduced over the summer. He was informed by the representatives that he could get benefits. The administrative law judge does not believe that this changes the result. The claimant was not entitled to unemployment insurance benefits as noted above. The administrative law judge is not without sympathy for the claimant but he was not entitled to benefits and most clearly after the letter of June 25, 2004 appearing at Department Exhibit One.

DECISION:

The representative's decision dated September 10, 2004, reference 01, is affirmed. The claimant, Gary P. Culver, is not entitled to receive unemployment insurance benefits from May 28, 2004 through August 19, 2004, because he was still employed by an educational institution between two successive academic years or terms and he had reasonable assurance that he would perform services in the ensuing or new academic year or term just as he did in the prior academic year or term.

kjf/b