

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

RAY A COLE SR
210 GUNNER RD
WATERLOO IA 50701

WATERLOO COMMUNITY SCHOOL
DISTRICT
c/o SHARON DROSTE
STAFF SERVICES
1516 WASHINGTON ST
WATERLOO IA 50702

Appeal Number: 06A-UI-01257-RT
OC: 07-31-05 R: 03
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 – Benefits Based on Service for an Educational Institution
Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.7-2-a-2 – Employer Contributions and Reimbursements (Same Employment – Benefits not Charged)

STATEMENT OF THE CASE:

The claimant, Ray A. Cole Sr., filed a timely appeal from an unemployment insurance decision dated January 26, 2006, reference 04, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on February 21, 2006, with the claimant participating. The employer, Waterloo Community School District, did not participate in the hearing, because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the Notice of Appeal. The administrative law judge takes official notice of Iowa Workforce

Development Department unemployment insurance records for the claimant. This appeal was consolidated with Appeal Number 06A-UI-01258-RT for the purposes of the hearing with the consent of the claimant. Although not set out on the Notice of Appeal, the claimant permitted the administrative law judge to take evidence on and decide, if necessary, whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times, he is, and was, not able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3) or whether he is excused from some of those provisions. Since this issue is inextricably linked with the issue concerning the “between terms denial” of a school district, the administrative law judge took evidence on and decided that issue even though the employer did not participate. The administrative law judge notes that the resolution of that issue works to the benefit of the employer as well as the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant is, and was, still employed by the employer, Waterloo Community School District. The claimant is employed part-time, working as a wrestling coach, football coach, and track coach during those athletic seasons. During the athletic seasons the claimant works approximately ten hours per week plus more for any meets or games. The claimant is under a contract to coach those sports and has a contract to coach track in the spring of 2006. The claimant coaches football from August to November and then coaches wrestling in November and December and then is off work until track begins in March, which lasts until May. Nothing has been done by the employer to indicate to the claimant that he will not continue to be so employed, but employment is not absolutely guaranteed.

The employer, Waterloo Community School District, is an educational institution licensed and certified as such by the Iowa State Department of Education. The claimant’s employment is not dependent upon periods between academic years or terms or school holiday recesses or breaks. The claimant’s employment depends upon the athletic seasons.

The claimant has been approved for Department Director Approved Training from August 6, 2005 to July 29, 2006. The claimant is a full-time student at Wartburg College and is appropriately attending his classes and the training. The claimant has placed no physical restrictions or training restrictions on his ability to work. Although the claimant is a full-time student in school, the claimant has placed no time or day or location restrictions on his availability for work. If the claimant found suitable work, he would change his school schedule to accommodate his work. The claimant is earnestly and actively seeking work by making two in-person job contacts each week. The holiday season for the Waterloo School District started on or about December 23, 2005, and ended on or about January 2 or 3, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is ineligible to receive unemployment insurance benefits because he is still employed by an educational institution but is off work because he is between two successive academic years or terms or holiday recesses or breaks and has reasonable assurance that he will be performing the same work in the new academic year or term as he did in the prior academic year or term or following the holiday recess or break. The claimant is not ineligible to receive unemployment insurance benefits for this reason, because although the claimant is employed by an academic institution and is off work and has reasonable assurance

that he will be employed in the 2006 term as he had been employed in the 2005 term, the claimant is not off work because he is between two successive academic years or terms or because of a holiday recess or break but because his work is seasonal depending upon the athletic seasons for the sports he coaches.

2. Whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times, he is, and was, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for these reasons.

Iowa Code section 96.4-5-b, c 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.

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.

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 the employer is an educational institution as defined at 871 IAC 24.51 (1). The claimant is not employed in an instructional or research or administrative capacity. The claimant is off work, but due to the change in athletic seasons. The claimant does have reasonable assurance that he will be performing the same or similar work in the 2006 school term that he had performed in the 2005 school term, namely, coaching, but he will be coaching different sports. The claimant has been coaching three sports (wrestling, football, and track) and has been doing so for several years and has every expectation that he will continue to do so, at least in the 2006 school term, because he has a contract. However, the administrative law judge is constrained to conclude that the claimant is not off work because he is between two successive academic years or terms or holiday seasons or recesses or breaks. The evidence is clear that the claimant is off work simply because of the end of the athletic seasons. The claimant's work ended temporarily at the end of the wrestling season in December of 2005. He will not go back to work until the start of the track season in March of 2006. The employer's holiday recess or break begins on or about December 23, 2005, and ends on or about January 2 or 3, 2006. The claimant will not go back to work, however, until March of 2006, when the track season begins. The claimant's temporary unemployment bears no relationship to the periods between successive academic years or terms or holidays or recesses or other breaks. The administrative law judge is therefore constrained to conclude that the "between terms denial" applicable to those employees of educational institutions who are off work between successive academic years or terms or holiday recesses or breaks, but have reasonable assurance and are ineligible for unemployment insurance benefits, does not apply to the claimant, because the claimant is not off work because of any academic year or term or recess or holiday or break. Even if the claimant was, or is, not considered and employee of the employer, he would still not be disqualified to receive unemployment insurance benefits, because he completed his contract of hire. See 871 IAC 24.26(19). Accordingly, the administrative law judge concludes that the claimant is not ineligible to receive unemployment insurance benefits for this reason. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

The administrative law judge notes that the claimant has been approved for Department Director Approved Training from August 6, 2005 to July 29, 2006, pursuant to Iowa Code section 96.6 (a). The administrative law judge concludes that the claimant is appropriately attending such Department Director Approved Training and therefore the employer's account shall not be charged for any unemployment insurance benefits to which the claimant is entitled. See Iowa Code section 96.6 (a).

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W. 2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he has been approved for Department Director Approved Training from August 6, 2005 to July 29, 2006, and therefore the claimant cannot be denied unemployment insurance benefits because he is not available for work or earnestly and actively seeking work. Further, the administrative law judge concludes that the claimant is temporarily unemployed as defined by Iowa Code section 96.19 (38) (b) and is excused from the requirements that he be available for work and earnestly and actively seeking work. The claimant credibly testified that he has placed no physical restrictions or training restrictions on his ability to work. Further, although the claimant does not have to be available for work, and earnestly and actively seeking work, the claimant credibly testified that he has placed no restrictions on times or days or locations where he could or could not work affecting his availability for work and he is earnestly and actively seeking by making two in-person job contacts each week. The claimant testified that he is a full time student at Wartburg College, but that he is prepared to change or alter his class schedule to accommodate employment. Accordingly, the administrative law judge concludes that the claimant is excused from the requirements that he be available for work and earnestly and actively seeking work and, in any event, the claimant is available for work and earnestly and actively seeking work. The administrative law judge further concludes that the claimant is able to work. Therefore, the administrative law judge concludes that the claimant is not ineligible to receive unemployment insurance benefits for these reasons. Unemployment insurance benefits are allowed to the claimant provided he appropriately attends the Department Director Approved Training and/or remains temporarily unemployed and/or remains able, available, and earnestly and actively seeking work and is otherwise entitled to such benefits. The administrative law judge reiterates that the employer should not be charged for these benefits because the claimant is appropriately attending approved Department Director Approved Training. See Iowa Code section 96.6 (a).

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for

available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that the employer herein, Waterloo Community School District, is a base period employer and the claimant is still in the employ of that employer and the claimant is receiving the same employment from the employer that he received during his base period. The claimant is merely off work between athletic seasons and this is the same employment that the claimant has always received from the employer. Therefore, the administrative law judge concludes that any unemployment insurance benefits to which the claimant is entitled should not be charged against the account of the employer herein and the account of the employer herein shall be relieved of any such charges. The administrative law judge notes that the employer also would not be charged for any benefits to which the claimant is entitled because the claimant is, as noted above, appropriately attending approved Department Director Approved Training. See Iowa Code section 96.6 (a).

DECISION:

The representative's decision of January 26, 2006, reference 04, is reversed. The claimant, Ray A. Cole, Sr., is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because, although the claimant is temporarily off work while in the employ of an educational institution and has reasonable assurance, it is not because of any period of time between academic years or terms or any recess or holiday break but is due only to the seasonal nature of his work as an athletic coach. Because the claimant is appropriately attending Department Director Approved Training and is further temporarily unemployed, the claimant is excused from the provisions that require him to be available for work and earnestly and actively seeking work and, in any case, the claimant is available and earnestly and actively seeking work and is further able to work. Any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein because the claimant is appropriately attending approved Department Director Approved Training and further the claimant is receiving the same employment from the employer as he received in his base period, and the employer's account should be relieved of any such charges.

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