

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

BETH A SALYARS
425 N 5TH PL
ELDRIDGE IA 52748

IOWA EAST CENTRAL T R A I N
2804 EASTERN AVE
DAVENPORT IA 52803-2012

Appeal Number: 04A-UI-06454-S2T
OC: 05/25/03 R: 04
Claimant: Respondent (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:

Iowa East Central T.R.A.I.N. (employer) appealed a representative's June 8, 2004 decision (reference 03) that concluded Beth Salyars (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 1, 2004. The claimant participated personally. The employer participated by Pamela damHorst, Human Resources Specialist.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant was hired on July 28, 1992, as a full-time teacher's assistant. The claimant's last

day of work was May 23, 2004. The employer is a quasi-educational institution which operates a Head Start program during the school year. The claimant knew that the position was ran through the academic year when she was hired and plans to return in the fall of 2004. The employer also plans on her return for the next season.

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 he is.

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.

The claimant is employed by a quasi-educational institution. The claimant worked for the 2003-2004 term and is expected to work for the 2004-2005 term. The two terms are successive. The claimant is between successive terms with a quasi-educational institution.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$846.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's June 8, 2004 decision (reference 03) is reversed. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer. The claimant is overpaid benefits in the amount of \$846.00.

bas/b