

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JO E NOWAK-THOMPSON

Claimant,

and

MOUNT VERNON COMM SCHOOL DIST

Employer.

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HEARING NUMBER: 10B-UI-10912

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 871 IAC 24.1(113)A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Jo E. Nowak-Thompson, was employed by Mount Vernon Community School District beginning September 25, 2009 as a part-time early childhood teacher for academic school year 2009-2010. (Tr. 3, 10) The claimant took the option of being paid on a 12-month basis as opposed to 9-month. (Tr. 6, 13) According to Iowa law, any teacher not being offered a contract for the upcoming school year must be notified by April 30th. (Tr. 8) The employer issued a reduction in workforce letter dated April 23rd, 2010 to Ms. Nowak-Thompson indicating that her contract would not be renewed due to budgetary constraints. (Tr. 3, 5, 10, Exhibit A) Not all teaching staff received this letter (Tr. 3); and for those teachers who didn't, their contracts were renewed as usual in August. (Tr. 7-8, 9)

The claimant completed the 2009-2010 school year and immediately filed for unemployment benefits on June 6, 2010. (Tr. 11) She received an e-mail on June 19th from Dr. Ewell, the School Board superintendent, who offered her the same position for the upcoming school year. (Tr. 3, 6, 11, 17-18, 19, Exhibit 1) In the meantime, the claimant's mother had passed and she was involved in funeral matters in both Arizona and Wisconsin. (Tr. 4, 1, Exhibit 2) Ms. Nowak-Thompson responded to the employer's e-mail on June 29th, explaining her slow response and indicating that she wanted to speak with Dr. Ewell. (Tr. 11, 18-19, Exhibit 2)

When the claimant returned to Iowa, she retrieved the contract, signed and returned it on July 6th. (Tr. 4, 7, 11, 12, 16, 20, Exhibit E) The School Board held a meeting on July 12th to vote on whether to approve the contract for the claimant's return to teach for the 2010-2011 academic year. (Tr. 12, 15, Exhibit D) The Board President signed and issued the claimant's contract on July 12, 2010. (Tr. 7, 12, 15, 16, Exhibit E)

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.1(113) provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status *initiated by the employer* without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations. (Emphasis added.)

The record clearly establishes that Ms. Nowak-Thompson experienced a layoff from her employment when she received the April 23rd letter terminating her contract at the end of the 2009-2010 school year (June 5, 2010). It is obvious that based on this letter, the claimant had no reasonable assurance of continued employment for the upcoming school year (2010-2011). Although the administrative law judge reasoned that there was no separation from employment because the claimant continued to be on the payroll through August and she received an offer for 2010-2011 in mid-June, we conclude differently. The claimant's extended pay was for services rendered during the 2009-2010 school year for which she was under contract. She merely opted to be paid those wages on a 12-month basis as opposed to a 9-month basis. This extended pay election is not commensurate with continued employment into the next school year. If the employer intended to continue her employment, then no April 23rd letter would have been generated in compliance with Iowa law that required such notification by April 30th for those teachers whom the school district intended *not* to make offers for the next academic year. (Tr. 8) The claimant's last day of employment for 2009-2010 was June 5, 2010, after which time she became unemployed through no fault of her own. Ms. Nowak-Thompson's separation was initiated by the employer within the meaning of the aforementioned statute. The claimant is allowed benefits.

871 IAC 24.52(8) provides:

Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a “when earned” basis rather than on a “when paid” basis. *Deferred wages currently paid which are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9) “b” and paragraph 24.13(2) “o.”* (Emphasis added.)

Although the employer offered the claimant a new contract on June 19th, the claimant had no reasonable assurance of employment for the next academic year until she was offered and accepted the terms of the new contract on July 6, 2010, and of which was finalized on July 12th. Thus, her eligibility for unemployment benefits is for the period between June 5th, 2010 and July 6, 2010 when she signed the new 2010-2011 contract.

DECISION:

The administrative law judge's decision dated October 12, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant was laid off between June 5th, 2010 and July 6^h, 2010. Accordingly, she is allowed benefits provided she is otherwise eligible.

John A. Peno

Monique F. Kuester

AMG/fnv