

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SANDRA S SCHWANKE
Claimant

APPEAL NO. 10A-UI-11751-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANITA COMMUNITY SCHOOLS
Employer

OC: 06/13/10
Claimant: Appellant (1)

Section 96.4-5 – Successive Academic Terms

STATEMENT OF THE CASE:

Sandra Schwanke (claimant) appealed a representative's August 17, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Anita Community Schools (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 6, 2010. The claimant participated personally. The employer participated by Linda Edwards, Business Manager.

ISSUE:

The issue is whether the claimant is an on-call worker with an educational institution and eligible for benefits between successive academic terms.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a substitute teacher on an as-needed basis beginning December 2008. Each spring, the employer sent the claimant a letter asking her if she planned to substitute teach in the coming academic year. The claimant always answered in the affirmative.

On May 23, 2010, the employer sent the claimant a letter asking her if she planned to substitute teach in the 2010 – 2011 school year. The claimant responded that she planned to continue to work for the employer. The claimant continued to work for the employer in the Fall of 2010.

On June 13, 2010, the claimant re-filed for unemployment insurance benefits. Her base period extends from the first quarter of 2009 through the fourth quarter of 2009. During the claimant's base period of employment, she earned wages only from the employer for on call work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is an on-call worker with an educational institution and not eligible for benefits between successive academic terms.

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 24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant is employed by an educational institution. The claimant worked for the 2009-2010 academic year and expected to work for the 2010-2011 academic year. The two seasons are successive terms. The Iowa Administrative Code regulation disqualifies an on-call substitute teacher, such as the claimant; however, an exception is made if the claimant has wages in her base period from other than on-call employment with a non-educational institution. Here, the

majority of the claimant's wages in her base period are from wages earned for on-call work from an educational institution. Thus, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 17, 2010 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits from wages earned with Anita Community Schools.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw