

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DYANNE D WENDLING

Claimant

APPEAL NO. 11A-UI-03288-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS COMM SCHOOL DIST

Employer

OC: 12/26/10

Claimant: Appellant (1)

Section 96.4-5-b – Whether the Claimant Has Reasonable Assurance of Employment Between
Academic Terms

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from an unemployment insurance decision dated February 8, 2011, reference 03, that denied benefits as of December 26, 2010 finding that the claimant's unemployment occurred during the customary vacation or holiday recess and that as an employee of an educational institution she was not eligible for benefits during the vacation period because the claimant had reasonable assurance of employment following the vacation. After due notice was issued, a telephone hearing was held on April 6, 2011. The claimant participated personally. The employer participated by Ms. Christina Kelly, Hearing Representative and witness, Ms. Brandy Gabrick, Human Resource Administrative Assistant.

ISSUE:

At issue is whether the claimant's appeal was timely and whether the claimant had reasonable assurance of continuing employment for an educational institution after a vacation recess.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Dyanne Wendling began employment with the Council Bluffs Community School District for the 2009-2010 school year as a substitute teacher. The claimant continued to be classified as a substitute teacher by the Council Bluffs Community School District although Ms. Wendling often did not often accept substitute teaching assignments that were offered to her in the spring of 2010 because she was also working on an assignment for a temporary employment service. The claimant continued to be carried on the Council Bluffs Community School District rolls and correspondence was sent out to the claimant and other substitute teachers indicating that continuing employment would be available the next academic term or after vacation recess periods to substitute teachers that were willing to accept assignments.

Ms. Wendling resumed accepting assignments as substitute teacher for the Council Bluffs Community School District accepting assignments on January 25, 26 and 31, 2011 and

assignments on February 15, 17 and 23, 2011. The claimant was aware that she was being maintained on the school district's employment rolls and that she continued to be categorized as a substitute teacher following the holiday recess that took place between December 23, 2010 and January 3, 2011.

The claimant testified that she attempted to file her initial appeal in this matter in a timely manner and believed that she had received a positive fax receipt report when she initially filed her appeal within the ten-day statutory time period. Later when the claimant was informed that the appeal had not been received she re-appealed the decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant did have reasonable assurance of returning to work for the period of time following the holiday recess taking place between December 23, 2010 and January 3, 2011.

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.

The claimant did have reasonable assurance of continuing employment for the period of time following the holiday recess that took place between December 23, 2010 and January 3, 2011. The claimant continued to be maintained on Council Bluffs Community School District rolls as a substitute teacher and the school district records reflect that the claimant had not indicated in any manner that she was quitting her position with the school district prior to those dates. The evidence in the record also establishes that continuing work was available to the claimant in her normal position as a substitute school teacher in January and February 2011 as the claimant continued to be employed in her normal capacity as a substitute teacher on January 25, 26 and 31, 2011 and February 15, 17 and 23, 2011.

Although the claimant may have engaged in other temporary employment she had been given reasonable assurance of continuing employment after the holiday recess and in fact resumed employment with this community school district after the recess. Because the claimant had been given reasonable assurance of continued employment after the holiday school break and

resumed employment after that date, the claimant is not considered unemployed and is ineligible for benefits between academic terms, breaks or recesses.

DECISION:

The unemployment insurance decision dated February 8, 2011, reference 03, is affirmed. Benefits are denied effective December 26, 2010. The claimant is not eligible to receive unemployment insurance benefits during vacation or holiday recesses as she had been given reasonable assurance of continuing employment in a customary occupation as an educational institution substitute teacher.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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