

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

BARBARA J LONG
112 W SOMERSET ST
RARITAN NJ 08869

FIRST STUDENT TRANSPORTATION LLC
705 CENTRAL AVE STE 300
CINCINNATI OH 45202

c/o ADP-UCS
P O BOX 6501
DIAMOND BAR CA 91765-8501

Appeal Number: 05A-UI-02385-HT
OC: 12/26/04 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 – Able and Available
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, First Student Transportation LLC (First Student), filed an appeal from a decision dated February 28, 2005, reference 03. The decision allowed benefits to the claimant, Barbara Long. After due notice was issued a hearing was held by telephone conference call on March 24, 2005. The claimant participated on her own behalf. The employer participated by Assistant Manager Robin Kimmel and was represented by ADP in the person of Rina Leib

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Barbara Long was employed by First Student beginning August 12, 2004. She was a part-time bus driver.

On November 16, 2004, she left Iowa to move to New Jersey to be closer to family members. Before resigning the claimant asked if First Student had an office in New Jersey but was told there was not, only in New York. However, upon arriving in New Jersey the claimant discovered there was a branch of First Student and she applied for a job and began on November 24, 2004. The paperwork was submitted to the corporate office in Ohio as a transfer and she kept her seniority date with the company of August 12, 2004.

Ms. Long filed for unemployment benefits with an effective date of December 26, 2004, when the school was on winter break. First Student only provides transportation services to the school districts, not to any other public or private entities.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is ineligible. The judge concludes she 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 was employed by a subcontractor of the educational institutions as a bus driver. Her unemployment was due to a normally scheduled break between academic terms and under the provisions of the above Code section, is not considered to be able and available for work.

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 unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 28, 2005, reference 03, is reversed. Barbara Long is not able and available for the one-week period ending January 1, 2005. She is overpaid in the amount of \$156.00.

bgh/kjf