

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERVIN NIEVES**

Claimant

**APPEAL NO: 12A-UI-07305-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KIRKWOOD COMMUNITY COLLEGE**

Employer

**OC: 05/20/12**

**Claimant: Appellant (2)**

Iowa Code § 96.4-5 - Reasonable Assurance/Educational Institution

**STATEMENT OF THE CASE:**

Ervin Nieves (claimant) appealed an unemployment insurance decision dated June 13, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he had a reasonable assurance of continuing employment in the next academic term or year. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 18, 2012. The claimant participated in the hearing with Allison York, dean of the English department. The employer participated through Sheri Hlavacek, human resources specialist. Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant has reasonable assurance of continuing employment in the next academic term or year.

**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 hired as a part-time adjunct instructor on August 22, 2006. He is currently between academic terms but will return to work on August 20, 2012, provided there is sufficient enrollment in the classes he teaches. The claimant is not on a contract with the employer.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. For the following reasons, the administrative law judge concludes it does.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

Iowa Code § 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 24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

The claimant is employed as an adjunct instructor with an educational institution and is between academic terms. The employer provides employment to the claimant but does not offer an employment contract. Since he does not have a reasonable assurance of reemployment in the same capacity for the successive term, benefits are allowed.

**DECISION:**

The unemployment insurance decision dated June 13, 2012, reference 01, is reversed. The claimant is eligible for unemployment insurance benefits, as he does not have reasonable assurance of reemployment in the same capacity.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw