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

WILLIAM W HANSON
1990 KINGS DR
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PLEASANT VALLEY
COMMUNITY SCHOOL DISTRICT
ATTN – SECRETARY
PO BOX 332
PLEASANT VALLEY IA 52767-0332

Appeal Number: 05A-UI-08570-RT
OC: 07-10-05 R: 04
Claimant: Respondent (1)

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 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quitting
Section 96.4-5 – Benefits Based on Service for an Educational Institution
Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Pleasant Valley Community School District, filed timely appeals from unemployment insurance decisions concerning four different claimants as follows: 05A-UI-08570-RT for claimant, William W. Hanson, decision dated August 9, 2005, reference 02, allowing the claimant unemployment insurance benefits; 05A-UI-08569-RT for claimant, Fred P. Pierce, decision dated August 9, 2005, reference 03, allowing the claimant unemployment insurance benefits; 05A-UI-08566-RT for claimant, Dennis E. Tipsword, decision dated August 9, 2005, reference 03, allowing the claimant unemployment insurance benefits;

and 05A-UI-08564-RT for claimant Terry J. Bush, decision dated August 9, 2005, reference 03, allowing the claimant unemployment insurance benefits. The four appeals were consolidated for the purposes of the hearing by the administrative law judge because all of the claimants were similarly situated concerning similar facts and issues and the parties consented to the consolidation. After due notice was issued, a telephone hearing was held on September 15, 2005, with all of the claimants participating. Jim Spelhaug, Superintendent of Schools, participated in the hearing for the employer. Mike Clingingsmith, Chief Financial Officer, was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of the Iowa Workforce Development Department unemployment insurance records for all of the claimants.

At 10:28 a.m. on September 9, 2005, claimant Bush spoke with the administrative law judge and asked that the hearing be rescheduled. Because Mr. Bush could participate by cell phone, the administrative law judge denied the request and Mr. Bush participated in the hearing. At 2:56 p.m. on September 12, 2005, the administrative law judge spoke to Mr. Clingingsmith. He had questions about the consolidation and the scheduling of the hearings five minutes apart. The administrative law judge explained the consolidation and the time intervals.

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: Claimant Hanson was employed by the employer as a part-time school bus driver from August 22, 2001 until he was laid off for a lack of work on June 30, 2005. He had been a substitute driver prior to becoming a regular bus driver. Claimant Pierce was employed by the employer as a part-time school bus driver from August 24, 1998 until he was laid off for a lack of work on June 30, 2005. He had been a substitute driver prior to becoming a regular driver. Claimant Tipsword was employed by the employer as a part-time school bus driver from October 30, 1995 until he was laid off for a lack of work on June 30, 2005. Claimant Bush was employed by the employer as a part-time school bus driver from December 20, 2004 until he was laid off for a lack of work on June 30, 2005. He was a substitute driver prior to becoming a regular driver.

The employer is a community school district accredited as such by the State Department of Education. In the spring of 2005, the employer determined to outsource its transportation for students. It contracted with First Student, Inc., to provide bus transportation effective July 1, 2005. As a result, all of the employer's bus drivers, including the claimants herein, were laid off for a lack of work effective June 30, 2005, because their positions with the employer were eliminated.

Claimant Hanson was hired by First Student, Inc., on July 29, 2005, and is presently working for it as a bus driver. Claimant Pierce was hired by First Student, Inc., on July 18, 2005, and is presently working for it as a bus driver. Claimant Tipsword was hired by First Student, Inc., on July 19, 2005, and is presently working for it as a bus driver. Claimant Bush was hired by First Student, Inc., on July 21, 2005 and is presently working for it as a bus driver. Although the claimants may not have received specific written notice of their layoff and the outsourcing of the transportation to First Student, Inc., they were all aware of the layoff and the outsourcing, as it was common knowledge throughout the area due to public hearings held by the employer's school board. First Student, Inc., is a profit corporation providing no educational services for the employer or other parties except the transportation of students to school and to school activities.

The claimant Hanson, at relevant times, had placed no training restrictions or physical restrictions on his ability to work and had placed no time or day restrictions on his availability for work and was earnestly and actively seeking work until he was hired by First Student, Inc. Claimant Pierce, at relevant times, had placed no training restrictions or physical restrictions on his ability to work and had placed no time or day restrictions on his availability for work and was earnestly and actively seeking work, at least until he was employed by First Student, Inc. Claimant Tipsword, at relevant times, had placed no training restrictions or physical restrictions on his ability to work and had placed no time or day restrictions on his availability for work and was earnestly and actively seeking work, at least until he was hired by First Student, Inc. Claimant Bush, at relevant times, had placed no training restrictions or physical restrictions on his ability to work and had placed no time or day restrictions on his availability for work and was earnestly and actively seeking work, at least until he was hired by First Student, Inc. Each claimant filed for unemployment insurance benefits and received unemployment insurance benefits prior to being fully employed by First Student, Inc.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimants' separations from employment were disqualifying event. They were not.

2. Whether the claimants are ineligible to receive unemployment insurance benefits because they are still employed by an educational institution, but are off work or temporarily unemployed between successive years or terms with an educational institution, and have reasonable assurance that they will be performing the same services in the new academic year or term, 2005-2006, that they performed in the 2004-2005 school year. The claimants are not ineligible to receive unemployment insurance benefits for this reason.

3. Whether the claimants are ineligible to receive unemployment insurance benefits because at relevant times they were not able, available, and earnest and actively seeking work. They are not ineligible to receive unemployment insurance benefits for those reasons.

4. Whether the claimants are overpaid unemployment insurance benefits. They are not.

Iowa Code section 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence establishes that the claimants were laid off for a lack of work and were not discharged for disqualifying misconduct, nor did they voluntarily leave their employment without good cause attributable to the employer. The evidence establishes that all of the claimants were employed by the employer as bus drivers, but the employer ended their employment on June 30, 2005, when it outsourced its bus transportation to a private company. Accordingly, the claimants positions were eliminated and they were laid off for a lack of work. This is not disqualifying. Therefore, the administrative law judge concludes that the claimants were laid off for a lack of work and, as a consequence, they are not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimants provided they are otherwise eligible.

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.

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 administrative law judge concludes that the employer, Pleasant Valley Community School District is an accredited school district by the State Department of Education and is therefore an educational institution. See 871 IAC 24.51(1). However, the administrative law judge is constrained to conclude that the claimants do not have reasonable assurance that they will be performing the same or similar services in the 2005-2006 school year as they did in the 2004-2005 school year from the employer, Pleasant Valley Community School District. It is true that the claimants had been hired by First Student, Inc., to provide the same or similar services as bus drivers, but First Student, Inc., is a profit corporation and is not an educational institution. Therefore, the administrative law judge is constrained to conclude that the claimants do not have reasonable assurance and, further, are not still employed by an educational institution. First Student, Inc., cannot be an educational institution because it is a profit corporation. See 871 IAC 24.51(1). The claimants have been permanently laid off from their employment with an educational institution. The administrative law judge concludes that the "between terms denial" of unemployment insurance benefits applicable to an educational institution does not apply in these situations because the claimants are no longer employed by an educational institution and do not have reasonable assurance of employment by an educational institution. Therefore, the administrative law judge concludes that the claimant's are not ineligible to receive unemployment insurance benefits as a result of the "between terms denial" for an educational institution. Unemployment insurance benefits are allowed to the claimants, provided they are otherwise eligible.

Iowa Code section 96.4-3 provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially

> unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant's have the burden to prove that they are and were able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or are otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimants have met their burden of proof to demonstrate by a preponderance of the evidence, that at relevant times, they were able, available, and earnestly and actively seeking work. The claimants testified credibly that they had placed no physical restrictions or training restrictions on their ability to work. The claimants also testified credibly that they had placed no restrictions on the days or times when they could or could not work, so as to affect their availability for work. The claimant's credibly testified that they were earnestly and actively seeking work, at least until they were hired by First Student, Inc., at which time they no longer needed to seek work since they obtained suitable work. There is no evidence to the contrary. Accordingly, the administrative law judge concludes that the claimants were able, available, and earnest and actively seeking work and, as a consequence, are not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided they are otherwise eligible.

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 administrative law judge concludes that the claimants have received unemployment insurance benefits since separating from the employer herein on or about June 30, 2005. The administrative law judge further concludes that the claimants are entitled to these benefits and are not overpaid such benefits.

DECISION:

The representative's decision of August 9, 2005, reference 02, is affirmed. The claimant, William W. Hanson, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible because he was laid off for a lack of work and was, at relevant times, able, available, and earnest and actively seeking work and was not subject to the "between terms

denial" for an educational institution. As a result of this decision, he is not overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

dj/kjw