

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE A CASTINLLO
Claimant

APPEAL NO. 13A-UI-07744-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HIGHLAND COMMUNITY SCHOOL DIST
Employer

OC: 05/26/13
Claimant: Appellant (4)

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

Michelle Castillo filed a timely appeal from the June 24, 2013, reference 01, decision that denied benefits effective May 26, 2013 based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on August 6, 2013. Ms. Castillo participated. Sue Rich, Human Resources Business Manager, represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant.

ISSUE:

Whether the claimant is disqualified for unemployment insurance benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michelle Castillo commenced working for the Highland Community School District in 2001. In May 2012, the employer laid Ms. Castillo off from her full-time employment as a classroom associate. During the 2012-2013 academic year, Ms. Castillo performed work for the district as a substitute classroom associate. During the first semester, Ms. Castillo performed work in a long-term substituting assignment. During the spring 2013 semester, Ms. Castillo performed work intermittently as a substitute classroom associate. While Ms. Castillo performed the substitute classroom associate work, her immediate supervisor was the school principal. The last day of the 2012-2013 academic school year was on or about May 31, 2013. As of that date, no one from the school district had spoken to Ms. Castillo regarding whether the same or similar work would be made available to Ms. Castillo during the 2012-2013 school year.

On June 6, 2013, the school district notified Ms. Castillo that it had two openings for a full-time classroom associate. On June 13, 2013, Ms. Castillo spoke with the school principal about the openings. Ms. Castillo understood at that time that either position was hers for the taking and that she would not have to formally apply. On June 14, 2013, Ms. Castillo met with the principal to further discuss the positions. On July 13, 2013, Ms. Castillo received a contract from the

district for the coming academic year. Ms. Castillo signed the contract that day and returned it to the school district.

Ms. Castillo established a claim for unemployment insurance benefits that was effective May 26, 2013. Ms. Castillo's base period for purposes of the claim consists of the four calendar quarters of 2012. Highland Community School District is Ms. Castillo's sole base period employer.

REASONING AND CONCLUSIONS OF LAW:

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

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.

c. With respect to services for an educational institution *in any capacity* under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

871 IAC 24.51(1) defines "educational institution" as follows:

Educational institution means public, nonprofit, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

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.

During the 2012-2013 academic year, Ms. Castillo was an educational professional and was employed by an educational institution in a part-time, on-call capacity. The weight of the evidence indicates that as of May 26, 2013, the effective date of the claim for benefits, Ms. Castillo did not have reasonable assurance that she would be employed as a substitute classroom associate during the 2013-2014 academic year in the same or similar manner as she had been employed during the 2012-2013 academic year. Thus, as of the effective date of the claim, Ms. Castillo was not precluded from receiving unemployment insurance benefits under the between academic terms provision set forth in Iowa Code section 96.4(5). As of Thursday, June 13, 2013, Ms. Castillo did have reasonable assurance from the principal that she would be returning to work for the District during the 2013-2014 academic year in an enhanced capacity, full-time classroom associate. As of that date, the between academic terms disqualification provision precluded Ms. Castillo from being eligible for unemployment insurance benefits based on the base period wages earned through the prior employment with Highland Community School District. Thus, Ms. Castillo is eligible for benefits for the two-week period of May 26, 2013 through June 8, 2013, provided she is otherwise eligible. The employer account of Highland Community School District may be charged for benefits paid for those two weeks. Effective the week that began June 9, 2013, Ms. Castillo is ineligible for benefits under the between academic terms exclusion set forth in Iowa Code section 96.4(5).

DECISION:

The claims representative's June 24, 2013, reference 01, decision is modified as follows. The claimant did not have reasonable assurance of further employment during the two-week period of May 26, 2013 through June 8, 2013. The claimant is eligible for benefits for those two weeks,

provided she is otherwise eligible. The employer's account may be charged for benefits paid for those two weeks. Effective the week that began June 9, 2013, the claimant had reasonable assurance of further employment at the end of the summer break. Effective June 9, 2013, the claimant is ineligible for benefits under the between academic terms exclusion set forth in Iowa Code section 96.4(5).

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css