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

BEVERLY D SCHRAMM
Claimant

APPEAL NO. 11A-UI-12104-MT

ADMINISTRATIVE LAW JUDGE
DECISION

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 05/22/11
Claimant: Appellant (4R)

Section 96.4-5 – Reasonable Assurance

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 8, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 10, 2011. Claimant participated personally. Employer participated by Cathy McKay, Risk Manager.

ISSUE:

The issue in this matter is whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: claimant was employed as a part-time substitute for the Des Moines Community School District during the 2010 – 2011 school year. Employer in June 2011 offered reasonable assurance of work for the next academic year by leaving claimant on the substitute roster. Claimant has credits from other employers in her base period.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 claimant did have reasonable assurance of continued employment for the 2011-2012 school year. As a result, the claimant is not considered unemployed. However, claimant has other credits from different employers in her wage history and may be eligible based on the other credits. This matter is remanded to determine whether she is eligible based on the other credits.

DECISION:

The decision of the representative dated September 8, 2011, reference 01, is affirmed and remanded. Unemployment insurance benefits shall be withheld unless claimant is otherwise eligible based on credits from other employment.

_____
Marlon Mormann
Administrative Law Judge

_____
Decision Dated and Mailed

mdm/pjs