

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL WELSH
Claimant

APPEAL NO: 15A-UI-00835-JE

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE COMMUNITY COLLEGE
Employer

**OC: 12/21/14
Claimant: Respondent (2)**

Section 96.4-5 – Reasonable Assurance
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 15, 2015, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 16, 2015. The claimant participated in the hearing. Janine Knapp, Associate Director of Human Services, participated in the hearing on behalf of the employer, and was represented by Attorney Sam Anderson. Employer's Exhibits One and Two were admitted into evidence.

The parties waived notice on whether the claimant is able and available for work and whether she had reasonable assurance of returning to work following a break between academic terms or semesters.

ISSUE:

The issue is whether the claimant received a reasonable assurance for employment in the next academic year.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a full-time shuttle driver for Hawkeye Community College. She was hired June 19, 2013, and continues to be employed in that capacity. The claimant works year round and does not sign a traditional educational employment contract.

The claimant's job requires her to shuttle over-the-road student truck drivers from CRST trucking taking a three-week course. She picks them up from the airport and takes them to and from class, their hotels, grocery stores and appointments, as well as other places. She works year round but CRST does not send students to the employer over the winter holiday period, which last ran from December 24, 2014 through January 2, 2015, during which time the claimant was laid off. She does work other times when students and faculty traditionally have breaks, for example during spring break and in the summer.

The claimant has claimed and received benefits in the amount of \$458.00 for the two weeks ending January 3, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did have a reasonable assurance of returning to work the following academic term.

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 § 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.

Iowa Admin. Code r. 871-24.51(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 an employee of an educational institution and was laid off during the employer's winter break period between December 24, 2014 and January 2, 2015. There is no question the claimant knew she would be returning to her job in January 2015. Under the definitions regarding "reasonable assurance" of employment with an educational institution, as stated above, the claimant does not qualify for unemployment insurance benefits because there was a verbal or implied agreement that the claimant would return in January 2015 to perform her job, without any change in her contract of hire. Any school employee knowing she will continue her work for the employer and returning to work following a customary break has a reasonable assurance of employment and consequently does not qualify for unemployment insurance benefits. Therefore, benefits must be denied.

DECISION:

The January 15, 2015, reference 02, decision is reversed. The claimant had a reasonable assurance of continuing her employment with an educational institution following winter break. Consequently, benefits must be denied. The claimant is overpaid benefits in the amount of \$458.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css