

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGEL N WARREN
Claimant

APPEAL NO. 07A-UI-06913-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOONE COMMUNITY SCHOOL DIST
Employer

**OC: 06/03/07 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Angel Warren filed a timely appeal from the July 13, 2007, reference 02, decision that denied benefits 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 July 31, 2007. Ms. Warren participated. Paulette Newbold, Accounting Office Manager, represented the employer and presented additional testimony through Jodi Severson, Business Manager. Exhibit One was received into evidence.

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: Angel Warren was employed by the Boone Community School District as a full-time, one-on-one educational associate during the 2006-2007 academic year and last performed work for the employer on June 5, 2007, the last day of school. On May 25, 2007, the School District offered Ms. Warren an employment agreement for the upcoming 2007-2008 academic year and Ms. Warren signed her acceptance of the agreement on June 7, 2007. Under the agreement, Ms. Warren will be performing the same full-time duties and receive a wage increase. Ms. Warren is to start her duties on August 27, 2007. Between June 5 and August 27, 2007, the school district is on its established and customary summer break.

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(3) provides the relevant definition of “professional employees” as follows:

a. Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution which consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services which consist of directing or supervising the instructional activities of others; or services which consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

871 IAC 24.51(3) provides the definition of “nonprofessional employees” as follows:

b. Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in an instructional, research, or principal administrative capacity.

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.

The evidence in the record establishes that Boone Community School District is an “educational institution” covered by the between academic terms disqualification provision Iowa Code section 96.4(5)(d). The evidence in the record establishes that Ms. Warren was a nonprofessional employee of during the 2006-2007 academic year and has reasonable assurance of employment in a similar capacity during the 2007-2008 academic year. The evidence indicates that Ms. Warren established her claim for benefits during the established and traditional summer vacation break. Iowa Workforce Development records indicate that Ms. Warren has insufficient “nonschool” base period wage credits to qualify for benefits based on those “nonschool” credits. See 871 IAC 24.52(4). Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Warren is disqualified for benefits, effective June 3, 2007, based on the between academic terms based on the provisions of Iowa Code section 96.4(5).

DECISION:

The claims representative's July 13, 2007, reference 02, decision is affirmed. The claimant is disqualified for benefits based on the between academic terms disqualification provisions of Iowa Code section 96.4(5). The claimant is disqualified for benefits effective June 3, 2007.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css