

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA C MOON
Claimant

APPEAL NO. 14A-UI-06908-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 06/08/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Barbara Moon filed a timely appeal from the June 27, 2014, reference 01, decision that denied benefits effective June 8, 2014, based on an agency conclusion that her claim was subject to 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 28, 2014. Ms. Moon participated. Rhonda Wagoner represented the employer. The administrative law judge took official notice of the agency's administrative record of the claimant's base period employers and of the wages reported for the claimant by those employers (DBRO and WAGEA).

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: Barbara Moon began working as an on-call substitute teacher for the Des Moines Independent Community School District in 2010 and most recently performed work for the employer on June 3, 2014. Ms. Moon has performed the work in the absence of a contract and has no contract with the District for the 2014-2015 academic year. During the 2013-2014 academic year, Ms. Moon worked 110 days out of 195-day academic year. During the 2013-2014 academic year, Ms. Moon had a couple of long-term assignments. The long-term assignments required an advance commitment from Ms. Moon to work for the duration of the assignment. The long-term assignments provided \$30.00 a day additional pay after the 10th consecutive day in the assignment. The first long-term assignment lasted for 16 consecutive school days, from October 28 to November 19, 2013. The more recent long-term assignment started on April 21, 2014 and ended on June 3, 2014, the last day of the 2013-2014 academic year. Prior to the end of the school year, the principal in whose school Ms. Moon was working notified Ms. Moon that the teacher for whom she had been long-term substituting would be returning in the fall.

It is the District's policy to continue substitute teachers on the District's substitute teacher roster unless and until the substitute teacher asks to be removed. The District does not make specific

contact with the substitute teacher, in writing or verbally, to provide assurance that the District will indeed use the employee's services during the next academic year. As of the July 28, 2014, appeal hearing, Ms. Moon has received no such assurance from the employer. The District's 2014-2015 academic year begins on August 20, 2014.

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.

871 IAC 24.52(6) provides as follows:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Obviously, the Des Moines Independent Community School District is an “educational institution” and is affected by the between academic terms disqualification provision Iowa Code section 96.4(5)(d). During the most recent academic year, Ms. Moon performed work for the District as a professional school teacher. The District heavily utilized Ms. Moon during the 2013-2014 academic year by having her work 110 of the 195 school days and by having her perform work in two long-term substituting assignments. The most recent long-term assignment lasted more than a month, to the last day of the 2013-2014 academic year. The employer specifically notified Ms. Moon that she would not be returning to that long-term assignment at the start of the 2014-2015 academic year. Ms. Moon had no assurance whatsoever that the employer would utilize her in the same or similar capacity, or that she would enjoy the same substantial remuneration during the ensuing academic year or term, compared to the 110 days she had worked and the extra pay that the long-term assignments had brought during the 2013-2014 academic year. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Moon is not disqualified for benefits between academic terms based on the provisions of Iowa Code section 96.4(5)(b). Benefits are allowed effective June 8, 2014, provided Ms. Moon is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The claims representative's June 27, 2014, reference 01, decision is reversed. The claimant did not have reasonable assurance of continued employment in the same or similar capacity, under the same or similar economic conditions, during the ensuing academic year or term as existed during the 2013-2014 academic year. The claimant is not disqualified for benefits based on the between academic terms disqualification provisions of Iowa Code section 96.4(5). Effective June 8, 2014, the claimant is eligible for benefits, provided she is otherwise eligible. This continued to be the case through July 28, 2014, the date of the appeal hearing. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css