

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER L DOSTAL
Claimant

APPEAL NO. 14A-UI-09801-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMUNITY SCHOOL DISTRICT
OF SOUTH TAMA COUNTY**
Employer

OC: 06/08/14
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Heather Dostal filed a timely appeal from the September 9, 2014, reference 02, decision that denied benefits effective June 8, 2014 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 October 10, 2014. Ms. Dostal participated. Mary Boege represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-09802-JT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and of the June 19, 2014, reference 01, decision that indicated Ms. Dostal had requalified for benefits after separating from employment with Mid-Iowa Community Action, Inc., employer account number 069381.

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: Heather Dostal commenced her employment with the Community School District of South Tama County in September 2013 and remains employed by the District. Ms. Dostal started the employment as a part-time teacher's aide and was assigned to work 25 hours per week at a middle school in Toledo. The 2013-2014 academic year ended on June 5, 2014. On May 14, 2014, Ms. Dostal signed a new contract with the District to perform the same work under the same conditions in the 2014-2015 academic year. Ms. Dostal was then temporarily laid off effective June 5, 2014 for the summer break. Ms. Dostal returned to work on August 18, 2014, the first day of the 2014-2015 academic year.

Ms. Dostal established a claim for benefits that effective June 8, 2014. Ms. Dostal has two base period employers. The primary base period employer is Mid-Iowa Community Action, Inc., employer account number 069381. Community School District of South Tama County is the other 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(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(4) provides as follows:

Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph “e.”

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.

Community School District of South Tama County is an educational institution affected by the between academic terms disqualification provision Iowa Code section 96.4(5)(d). Ms. Dostal was employed by the District during the 2013-2014 academic year and had reasonable assurance, as of May 14, 2014, of employment in a similar capacity during the 2014-2015 academic year. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Dostal is disqualified for benefits based on the employment with the District, effective June 8, 2014, between academic terms based on the provisions of Iowa Code section 96.4(5)(b).

Iowa Workforce Development records indicate that the bulk of Ms. Dostal's base period wage credits are from non-school wage credits based on her employment with Mid-Iowa Community Action, Inc., employer account number 069381. Ms. Dostal's disqualification for benefits based on the school employment with the Community School District of South Tama County due to the between academic terms disqualification does not prevent her from being eligible for benefits based on the non-school wage credits based on the employment with Mid-Iowa Community Action, Inc. Ms. Dostal would be eligible for benefits based on the non-school base wage credits, provided she is otherwise eligible.

DECISION:

The claims deputy's September 9, 2014, reference 02 decision is modified as follows. Effective June 8, 2014, the claimant is disqualified for benefits *based on wage credits from Community School of South Tama County* under the between academic terms disqualification provisions of Iowa Code section 96.4(5). However, the claimant is eligible for benefits based on other, non-school wage credits, provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css