

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REX T ROMINGER
Claimant

APPEAL NO. 17A-UI-08631-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARDINAL COMMUNITY SCHOOL DIST
Employer

OC: 07/23/17
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Rex Rominger filed a timely appeal from the August 18, 2017, reference 02, decision that denied benefits effective July 23, 2017, based on an agency conclusion that Mr. Rominger's claim was established between academic terms further conclusion that Mr. Rominger had reasonable assurance of employment in the next academic term. After due notice was issued, a hearing was held on September 11, 2017. Mr. Rominger participated. The employer did not register a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the administrative law judge decision entered in Appeal Number 17A-UI-06907-JCT.

ISSUE:

Whether the claimant is disqualified for unemployment insurance benefits effective July 23, 2017 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: Rex Rominger commenced his employment with Cardinal Community School District in 2015. Mr. Rominger has only performed work for the District as a part-time, on-call substitute teacher. Mr. Rominger was on the school district's active substitute teacher call list during the 2016-2017 academic year. Mr. Rominger last performed work for the school district on January 12, 2017. From January to March 2017, Mr. Rominger was unable to work due to illness. During the latter half of March 2017, Mr. Rominger notified the school district that he was once again available for substitute teaching work. The school district's 2016-2017 academic year ended on May 24, 2017. During the previous summer break, the school district had sent Mr. Rominger a post card that thanked him for his service and that stated the school district looked forward to having him perform additional work in the upcoming academic year. Mr. Rominger did not receive any such post card or other similar assurance in 2017 indicating that the school district would have work for him in the 2017-2018 academic year. After the 2017-2018 academic year began, Mr. Rominger made contact with the school district to inquire about his employment status. At that time, a district representative told Mr. Rominger that the district had transitioned to an

automated telephone system of summoning substitute teachers to work and explained the process whereby Mr. Rominger could access the system to indicate his availability for work.

Mr. Rominger's base period wages and wage credits derive exclusively from part-time on-call substitute teaching with multiple school districts.

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.

The employer did not participate in the appeal hearing and thereby presented no evidence to prove that Mr. Rominger had reasonable assurance during the 2017 summer break of continued employment during the 2017-2018 academic year. The employer had the burden of proving that Mr. Rominger was not eligible for unemployment insurance benefits. See Iowa Code section 96.6(2). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976). Cardinal Community School District is an "educational institution" covered by the between academic terms disqualification provision Iowa Code section 96.4(5)(d). Mr. Rominger was a part-time, on-call professional employee of the District during the 2016-2017 academic year. Mr. Rominger's July 23, 2017 original claim for benefits was established during the traditional summer break. At the time Mr. Rominger established his claim he did not have reasonable assurance of continued similar employment in the 2017-2018 academic year. The school district had not communicated such assurance and had deviated from the prior practice of giving notice that there would be additional similar work. For this reason, the between-academic-terms disqualification set forth in Iowa Code section 96.4(5) did not disqualify

Mr. Rominger for benefits in connection with the July 23, 2017 original claim. The employer's account will not be relieved of liability for benefits.

DECISION:

The August 18, 2017, reference 02, decision is reversed. In connection with the original claim that was effective July 23, 2017, the claimant is not disqualified for benefits based on the between academic terms disqualification provisions of Iowa Code section 96.4(5). Benefits are allowed effective July 23, 2017, provided the claimant is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been an unemployed person since he established the claim that was effective July 23, 2017. See Iowa Administrative Code rule 871-24.22(2)(i)(3).

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs