

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONSTANCE M MOMENI

Claimant

APPEAL NO. 10A-UI-17765-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASON CITY COMMUNITY SCHOOL DIST

Employer

OC: 04/11/10

Claimant: Appellant (1)

Section 96.4-3 – Able to and Available for Work
871 IAC 24.22(2)i(3) – On-call Substitute Teachers
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 29, 2010, reference 04, that concluded she was ineligible for benefits because she was still employed in her on-call job in the same capacity as her original contract of hire. A telephone hearing was held on February 9, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Ramona Jeffrey participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the decision of the administrative law judge in appeal 10A-UI-10867-DT that concluded the claimant was not subject to the "between-terms" disqualification until July 10, 2010, has been reversed by the Employment Appeal Board in a decision in 10B-UI-10867. The Board concluded that the claimant was subject to the between-term disqualification as of the end of the school year, May 30, 2010. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision. It should also be noted that 10A-UI-10867-DT mistakenly stated that it was a decision regarding the reference 04 decision issued July 29, 2010, but actually was the decision regarding the reference 05 decision issued July 29, 2010.

ISSUE:

Did the claimant file a timely appeal?

Is the claimant ineligible for benefits because all her base-period wages are from on-call, substitute teaching?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 11, 2010. The wages in the claimant's base period from January 1, 2009, to December 31, 2009, were all from on-call substitute teaching. The claimant has worked for the employer on call as a substitute teacher with no guarantee on the number of days of work she will receive for several years.

An unemployment insurance decision (reference 04) was mailed to the claimant's last-known address of record on July 29, 2010. The decision concluded she was ineligible for benefits effective April 11, 2010, because she was still employed in her on-call job in the same capacity as her original contract of hire and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 8, 2010. On the same day, an unemployment insurance decision (reference 05) was also mailed to the claimant, which concluded she was an educational employee ineligible for between school terms effective May 30, 2010.

The claimant appealed both disqualifications on August 8, 2010, but only the appeal regarding the between-terms disqualification was set up as appeal 10A-UI-10867-DT. The administrative law judge in appeal 10A-UI-10867-DT concluded the claimant was subject to the "between-terms" disqualification but not until July 10, 2010. The Employment Appeal Board in a decision in 10B-UI-10867 reversed the judge's decision. The Board concluded the claimant was subject to the between-term disqualification as May 30, 2010, not July 10, 2010.

The administrative law judge had remanded the case for a decision on whether the claimant was eligible for benefits during the school year, since the claimant had applied for benefits effective April 11, 2010. The decision based on that remand was issued on December 23, 2010 (reference 06), which concluded the claimant was ineligible because all of her base period wages were from on-call substitute teaching with no guarantee on the number of days of work. The claimant appealed that decision on December 28, 2010.

On December 22, 2010, an unemployment insurance decision (reference 07) was issued that concluded the claimant was overpaid \$1,680.00 from April 11 through July 24, 2010, because of the decision dated July 29, 2010, that disqualified her for being unavailable for work. The claimant appealed that decision on December 28, 2010.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal of the decision dated July 29, 2010 (reference 04), which concluded she was ineligible for benefits effective April 11, 2010. The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2.

The claimant filed a timely appeal of the decision dated July 29, 2010 (reference 04), on August 8, 2010, but a separate appeal file was not created. In addition, the Agency's error in not setting up the appeal would excuse the delay in filing an appeal. 871 IAC 24.35(2). Finally, the decision in December 23, 2010 (reference 06), really restates the decision dated July 29, 2010 (reference 04), so the Agency has revived the claimant's right to appeal the decision in any event.

The next question is whether the claimant is ineligible for benefits because all her base-period wages are from on-call, substitute teaching. The law requires claimants to be able to work and available for work. Iowa Code § 96.4-3. The availability rules promulgated by the Agency state: "An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code § 96.19(38)"a" and "b." 871 IAC 24.22(2)i(3). The law requires that a person meet the definition of being an unemployed individual to receive benefits. Iowa Code 96.4.

The claimant is ineligible for benefits because all her base-period wages are from on-call, substitute teaching with no guarantee as to the hours or days of work.

The claimant argued that the administrative law judge's decision in 10A-UI-10867-DT meant that she should receive benefits before July 19, 2010. The decision, of course, has been reversed, but even if it had been affirmed, it only meant that the between-terms disqualification for education employees did not apply to her until July 19, 2010. It was not a decision regarding her overall eligibility for benefits, which this decision is.

DECISION:

The unemployment insurance decision dated July 29, 2010, reference 04, is affirmed. The claimant is ineligible for benefits because all her base-period wages are from on-call, substitute teaching with no guarantee as to the hours or days of work and she does not meet the definition of being an unemployed individual.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css