

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA A MCDONOUGH**  
Claimant

**APPEAL NO. 12A-UI-10905-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COMMUNITY SCHOOL DIST**  
Employer

**OC: 07/08/12**  
**Claimant: Respondent (2-R)**

Section 96.4-5-a – Reasonable Assurance

**STATEMENT OF THE CASE:**

Dubuque Community School District filed a timely appeal from a representative's decision dated August 30, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits effective July 8, 2012 finding the claimant had not been given reasonable assurance for school employment in the following academic year or term. After due notice was provided, a telephone hearing was held on October 4, 2012. The claimant participated. The employer participated by Ms. Amy Vandermeulen, Benefit Coordinator.

**ISSUE:**

The issue is whether the claimant had reasonable assurance of continuing employment with the school district in the following academic term or year.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Theresa McDonough began her employment with the Dubuque Community School District as a para professional in May 2006. Subsequently, the claimant was employed as a substitute teacher for the spring term of the 2011-2012 school term. At the conclusion of the school term the claimant had not been notified by the school district that her services would not be used in the next school term or year. The school district practices to inform teachers or substitute teachers only if their services will not be utilized in the next term or year.

During this time Ms. McDonough was also making application for full-time employment as a teacher with the district and was in the application process. On June 19, 2012, a contract for full-time employment for the academic school year of 2012-2013 was sent to the claimant. Ms. McDonough signed the contract and returned it to the school district on June 28, 2012. The claimant thus had assurance of continuing employment for the next academic term or year. Ms. McDonough nevertheless opened a claim for unemployment insurance benefits between academic terms or years effective July 8, 2012 and was allowed unemployment insurance benefits.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did have reasonable assurance of returning to work in an instructional capacity for the Dubuque Community School District for the following academic year.

Iowa Code section 96.4-5-a provides:

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.

As the evidence in the record establishes that Ms. McDonough had reasonable assurance of continuing employment for the 2012-2013 school year effective June 28, 2012, the claimant is ineligible to receive unemployment insurance benefits between academic terms or years. Benefits are denied effective July 8, 2012.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated August 30, 2012, reference 01, is reversed. Claimant does have reasonable assurance of returning to work the following academic year. Benefits are denied effective July 8, 2012. The issue of whether the claimant must repay benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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