

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOAH F SIELA
Claimant

APPEAL NO. 12A-UI-06933-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIRKWOOD COMMUNITY COLLEGE
Employer

OC: 05/13/12
Claimant: Appellant (3-R)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 8, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on July 6, 2012. Claimant participated. Employer participated through Sheri Hlavacek.

ISSUE:

Does claimant have reasonable assurance of continued employment in the next school term or year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an adjunct instructor beginning August 22, 2011. He last worked December 18, 2011, and his pay ran through December 31, 2011. He is next expected to work August 20, 2012 for the fall semester. He did not work the spring semester that ended May 11, 2012, and generally only teaches courses that are offered in the fall semester, depending on a threshold enrollment. The effective date of his claim is May 13, 2012. Claimant has other regular non-educational institution employment wage credits in the base period. He worked for Robert Half Corporation in the fourth quarter of 2011 and the first quarter of 2012, the base period lag quarter. He also worked for ACT, Inc. and Sylvan Learning Center in the fourth quarter of 2011. The record is unclear as to whether he is monetarily eligible for benefits based upon the wages other than Kirkwood Community College.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does have reasonable assurance of returning to work the following academic term or 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.

871 IAC 24.51(6) provides:

School definitions.

(6) 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.

Iowa Code section 96.4-5-c 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:

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.

Iowa Code section 96.4-5-d 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:

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 24.52(6) provides:

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 § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

In this case, the claimant does have other non-educational institution wage credits in the base period. The claimant does have reasonable assurance of continued employment for the 2012-2013 school year but may be otherwise monetarily eligible according to base period wages.

DECISION:

The June 8, 2012 (reference 01) decision is modified in favor of the appellant. The claimant does have reasonable assurance of returning to work the following academic year or term but he has other wages in the base period. Benefits may be allowed, provided he is otherwise eligible.

REMAND:

The monetary eligibility issue based upon wages from other employers as delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw

NOTE TO EMPLOYER:

If you wish to change your mailing address of record to remove the reference to "Area 1", please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v= mpCM8FGQoY>