

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TAMI J KAUNE
13515 – 204TH ST
ZWINGLE IA 52079**

**NORTHEAST IOWA COMM COLLEGE
PO BOX 400
CALMAR IA 52132**

**Appeal Number: 05A-UI-00683-BT
OC: 12/19/04 R: 4
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-5 – Reasonable Assurance

STATEMENT OF THE CASE:

Tami Kaune (claimant) appealed an unemployment insurance decision dated January 12, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she was on a customary vacation or holiday recess with Northeast Iowa Community College (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 3, 2005. The claimant participated in the hearing. The employer participated through Julie Huiskamp, Director of Human Resources.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant is employed as a substitute in the library, at the switchboard and in the print shop. She was off work on a customary winter break between successive terms from December 16, 2004 through January 11, 2005, even though she had been able to pick up some hours during the interim. She has not separated from her full-time employer and is still employed at the same hours and wages as anticipated at the time of hire.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits and for the following reasons, the administrative law judge concludes it does not.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

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.

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The claimant is still employed with an educational institution. The claimant was off work for the winter break between academic terms. She had a reasonable assurance of reemployment in the same capacity for the successive term. Since she has a reasonable assurance of reemployment in the same capacity for the successive term, benefits are denied.

DECISION:

The unemployment insurance decision dated January 12, 2004, reference 01, is affirmed. The claimant is still employed with an educational institution and is not eligible for benefits.

sdb/sc