

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time Paraeducator and substitute bus driver in the 2004-2005 school year, working approximately 37 and a half hours per week. The employer is a school district accredited as such by the Iowa State Department of Education. The claimant's employment in 2004-2005 ended at the end of the school year on June 3, 2005. Prior to that time a meeting had been held in which the Superintendent of Schools, Dr. Cook, informed the people at the meeting that at least certified special education paraeducators, would be retained for the 2005-2006 school year. However, shortly thereafter at a school board meeting on June 28, 2005, the claimant was informed that her name was not on the list of paraeducators to be employed in the 2005-2006 school year. The claimant asked why and was informed of budget cuts. The school board secretary also informed the claimant of this. The 2005-2006 school year began on August 24, 2005. The claimant was hired as a paraeducator in the 2005-2006 school year, but several days after the school year had actually started and only for thirty-five hours a week, which is not full time. The claimant worked over the summer for another school district and was only unemployed for approximately one-week. The claimant filed for unemployment insurance benefits effective August 14, 2005 and received only one week of benefits in the amount of \$207.00 for benefit week ending August 20, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is and was still employed by an educational institution between two successive academic years or terms and had reasonable assurance that she would be performing the same or similar duties in the new academic year or term as she had in the prior academic year or term and therefore the claimant would be ineligible to receive unemployment insurance benefits. The administrative law judge concludes that the claimant is and was employed by an educational Institution between two successive academic years or terms, but did not have reasonable assurance at relevant times and is not ineligible to receive unemployment insurance benefits for that reason.

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.

The administrative law judge concludes that there is a preponderance of the evidence that the claimant was employed by an educational institution in the 2004-2005 school year acting as a Paraeducator for special education students. The claimant credibly testified that the employer is a school district in the State of Iowa accredited as such by the State Department of Education. Therefore, the administrative law judge concludes that the employer is an educational institution. See 871 IAC 24(1). The issue then becomes whether the claimant had reasonable assurance that she would be performing services in the same or similar capacity in the new or ensuing school year or term, 2005-2006 as she had in the 2004-2005 school year. The administrative law judge is constrained to conclude that the claimant did not have such reasonable assurance. The claimant was informed before the end of the 2004-2005 school year that she would be similarly employed. However, at a school board meeting on or about June 28, 2005, the claimant's name was not on a list of paraeducators to be reemployed in the 2005-2006 school year. When the claimant asked why she was informed it was because of budget cuts. The claimant was also informed by the school board secretary that she was not going to be working as a paraeducator. There is no evidence to the contrary. The administrative law judge is constrained to conclude on the record here that the claimant did not have reasonable assurance. Strengthening this conclusion is the claimant's testimony that although she is now employed by the employer she is only employed as a part-time paraeducator working only 35 hours per week and that she began this employment after the 2005-2006 school-year began August 24, 2005. Accordingly, the administrative law judge concludes that although the claimant is and was at relevant times employed by an educational institution and that she was off work or temporarily unemployed between academic years or terms, the claimant did not have reasonable assurance at appropriate times that she would be performing the same or similar services in the new academic year or term, 2005-2006, that she performed in the 2004-2005 school year and therefore she is not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

DECISION:

The representative's decision of September 7, 2005, reference 02, is affirmed. The claimant, Corina L. Nation, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because, although she is and was at relevant times employed by an educational institution, but was off work between academic years or terms, the claimant did not have reasonable assurance that she would be performing the same or similar services for the educational institution in the 2005-2006 school year as she had in the 2004-2005 school year.

dj/kjw