

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L ROLING
Claimant

APPEAL NO. 13A-UI-09705-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DUBUQUE COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 04/14/13
Claimant: Respondent (4)

Section 96.4-5 – Successive Academic Terms

STATEMENT OF THE CASE:

Dubuque Community School District (employer) appealed a representative's August 15, 2013, decision (reference 05) that concluded Jennifer Roling (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 26, 2013. The claimant participated personally. The employer participated by Amy VanderMeulen, Coordinator.

ISSUE:

The issue is whether the claimant is an on-call worker with an educational institution and eligible for benefits between successive academic terms.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a substitute paraprofessional on an as-needed basis beginning April 22, 2013. The claimant worked full time every day through June 11, 2013. The claimant does not have a continuing contract with the school district. The claimant did have reasonable assurance that she would be hired again in the next academic year as a substitute with the school district. The claimant's base period is comprised mostly of wages earned from full-time work for a non-educational institution. The majority of the claimant's base period wages are not from on-call work.

The employer participated at the fact-finding interview on August 14, 2013, by Amy VanderMeulen.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is an on-call worker with an educational institution and eligible for benefits between successive academic terms.

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.

871 IAC 24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(3) 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 section 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The Iowa Administrative Code regulation would normally disqualify an on-call substitute, such as the claimant, however an exception is made if the claimant has wages in her base period from other than on-call employment with a non-educational institution. Here the majority of the claimant's wages in her base period are from wages earned for full-time work from an employer other than an educational institution. Thus, the claimant is eligible to draw upon wages earned with other, non-educational employers.

The claimant had reasonable assurance of substitute teaching work during the coming 2013-2014 academic year. She is therefore ineligible to receive benefits under the provision of the above code section based on any wages earned with Dubuque Community School District.

There is no overpayment in this case.

DECISION:

The representative's August 15, 2013, decision (reference 05) is modified in favor of appellant. The claimant is not eligible to receive benefits from wages earned with this employer. However,

she is eligible to receive benefits based on wages from other non-educational employers. There is no overpayment in this case.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css