

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE O STIRLING
Claimant

APPEAL NO. 08A-UI-06177-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NASHUA-PLAINFIELD COMMUNITY
SCHOOL DISTRICT**
Employer

OC: 06-22-08 R: 02
Claimant: Respondent (4)

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.5(9) – Reasonable Assurance - Athletes

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 3, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 21, 2008. The claimant did not participate. The employer did participate through Michael Kalvig, Business Manager/Board Secretary.

ISSUE:

Is the claimant unemployed between successive academic years?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a wrestling coach for this employer, the school district. He also worked for another full time employer who laid him off for a period of weeks. The claimant made a claim for unemployment benefits for the two-week period ending July 5 2008 during which he was laid off by his full-time employer. The claimant expects to work again this upcoming academic year as a wrestling coach for the school district. The claimant is unemployed as a wrestling coach between academic years, but was temporarily laid off by his full-time employer for a short period of time.

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 year.

Iowa Code § 96.4-5-b 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:

b. Benefits based on service in any other capacity for 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 terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

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 § 96.5 (9) provides: *Athletes - disqualified.* Services performed by an individual, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods, if such individual performs such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such season or similar periods.

The claimant does have reasonable assurance of continued employment for the 2008-2009 school year. As a result, the claimant is not considered unemployed from this employer, the Nashua-Plainfield school district. However, the claimant was temporarily employed for a period of two weeks from his other full time employment and is entitled to draw unemployment benefits for the two-week period ending July 5, 2008. The account of this employer, (acct no. 342110 shall not be charged).

DECISION:

The July 3, 2008, reference 01, decision is modified in favor of the appellant. The claimant does have reasonable assurance of returning to work the following academic year. The account of this employer (acct no. 342110) shall not be charged. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs