

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELE K SMITH**  
Claimant

**APPEAL NO. 09A-UI-11969-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FREMONT MILLS COMMUNITY SCHOOL  
DISTRICT**  
Employer

**OC: 06/07/09**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

**STATEMENT OF THE CASE:**

Michele Smith filed a timely appeal from the August 10, 2009, reference 06, decision that denied benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on September 24, 2009. Ms. Smith participated. Susan Shepherd, Board Secretary, represented the employer. The administrative law judge took official notice of the Agency's administrative record of the claimant's base period wage credits.

**ISSUE:**

Whether the claimant is disqualified for unemployment insurance benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5).

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Michele Smith has worked for the Fremont Mills Community School District as an on-call substitute teacher since 2007. Ms. Smith worked for the school district 19 times during the 2008-2009 academic year, which ended May 21, 2009. Ms. Smith most recently worked for the school district on May 15, 2009. Prior to August 25, 2009, neither Ms. Smith nor the school district had said anything to the other to indicate that Ms. Smith would not continue in the on-call substitute teacher position during the 2009-2010 academic year, which started August 19, 2009. The school district contacted Ms. Smith on August 25, 2009 to offer Ms. Smith work during September 2009. Ms. Smith had accepted other, full-time employment and declined the offer.

Ms. Smith established a claim for unemployment insurance benefits that was effective June 7, 2009 in connection with the 2008-2009 academic year coming to an end. Ms. Smith has continued her claim for benefits since that time.

Ms. Smith started her new full-time employment on September 1, 2009.

Workforce Development administrative records indicate that all of Ms. Smith's base period wage credits derive from substitute teaching work. There are no non-school base period wage credits.

### **REASONING AND CONCLUSIONS OF LAW:**

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

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.

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.

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 24.51(6) defines “reasonable assurance” as follows:

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.

Substitute teachers are professional employees and are therefore subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods. 871 IAC 24.52(10)(a).

Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to 871 IAC 24.22(2)(i)(3). See 871 IAC 24.52(10)(c).

The evidence in the record establishes that the Fremont Mills Community School District is an “educational institution” affected by the between academic terms disqualification provision at Iowa Code section 96.4(5)(d). The evidence in the record establishes that Ms. Smith, in her capacity as an on-call substitute teacher, was a professional employee of the Fremont Mills Community School District during the 2008-2009 academic year and had reasonable assurance of employment in a similar capacity during the 2009-2010 academic year. Ms. Smith’s on-call employment with the Fremont Mills Community School District was subject to the between academic terms disqualification provision at Iowa Code section 96.4(5)(a). Effective June 7, 2009, Ms. Smith is disqualified for benefits based on the wage credits earned through the on-call employment with the Fremont Mills Community School District.

**DECISION:**

The claims representative’s August 10, 2009, reference 06, decision is affirmed. Effective June 7, 2009, the claimant is disqualified for benefits based on the between academic terms disqualification provisions of Iowa Code section 96.4(5).

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css