

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE R BALDWIN
Claimant

APPEAL NO. 13A-UI-05936-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA COMMUNITY COLLEGE
Employer

**OC: 12/16/12
Claimant: Respondent (2-R)**

Section 96.4(3) – Able and Available
Section 96.4(5)a – Reasonable Assurance

STATEMENT OF THE CASE:

The employer, Eastern Iowa Community College (EICC), filed an appeal from a decision dated May 10, 2013, reference 02. The decision allowed benefits to the claimant, Bruce Baldwin. After due notice was issued a hearing was held by telephone conference call on June 27, 2013. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Personnel Specialist LeAnn Gillespie.

ISSUE:

The issue is whether the claimant had reasonable assurance of continued work between academic terms.

FINDINGS OF FACT:

Bruce Baldwin was employed by EICC beginning March 22, 2011 as a part-time welding instructor. He filed a claim for unemployment benefits with an effective date of December 16, 2012, which was the beginning of break between fall and winter semesters. He had reasonable assurance of work for the following semester and resumed teaching January 14, 2013.

Bruce Baldwin has received unemployment benefits since filing a claim with an effective date of December 16, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

Under the provision of the above Code section, the claimant is not eligible for unemployment benefits during period between successive academic terms as he had reasonable assurance of continued work at the end of the break. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of May 10, 2013, reference 02, is reversed. Bruce Baldwin is not eligible for benefits beginning December 16, 2012. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs