

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARILYN F SMITH
Claimant

APPEAL NO. 11A-UI-01865-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAUKEE COMMUNITY SCHOOL DISTRICT
Employer

OC: 01/02/11
Claimant: Appellant (1)

Section 96.4-5 – Successive Academic Terms

STATEMENT OF THE CASE:

Marilyn Smith (claimant) appealed a representative's February 9, 2011 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits based on her work with Waukee Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for March 9, 2011, in Des Moines, Iowa. The claimant participated personally. The employer participated by Duane Magee, director of human resources.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a substitute teacher on an as-needed basis beginning January 21, 2009. The claimant does have reasonable assurance that she will continue working as a substitute teacher. The claimant's base period is comprised of only wages earned from on-call work for educational institutions.

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 not eligible for benefits.

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 24.22(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 disqualifies an on-call substitute teacher, such as the claimant. An exception is made if the claimant has wages in her base period from employment other than on-call employment with a non-educational institution. Here, all of the claimant's wages in her base period are from wages earned for on-call substitute teaching from educational institution employers. Thus, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 9, 2011 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw