

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLA D CREEK
Claimant

APPEAL NO. 11A-UI-01362-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHER COLLEGE
Employer

**OC: 12/26/10
Claimant: Appellant (1)**

Section 96.4-5 – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated January 28, 2011, reference 01, which denied benefits as of December 26, 2010, upon a finding that the claimant had reasonable assurance of returning to work following an academic vacation period for an education institution. After due notice was issued, a telephone hearing was held on February 15, 2011. The claimant participated personally. The employer participated by Mr. Roy Prigge, director of human resources.

ISSUE:

The issue is whether the claimant had reasonable assurance of returning to work following an academic vacation or recess.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Marla D. Creek has been employed by Luther College for a number of years and works as a full-time dining service employee.

Ms. Creek was temporarily laid off during a vacation period between academic terms. The claimant was aware through prior practice and verbal instructions that her employment would resume with Luther College following the period between academic terms. Ms. Creek returned to employment following the recess that took place on or about December 26, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did have reasonable assurance of returning to work for the next academic term.

Iowa Code section 96.4-5-a, 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:

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.

The evidence in the record establishes that Ms. Creek was aware through prior practice and verbal instructions that continuing work was available to her as a direct service worker with Luther College following the recess between academic terms that took place on or about December 26, 2010.

As the claimant did have reasonable assurance of continuing employment for the next academic term, the claimant is not considered unemployed and is ineligible to receive unemployment insurance benefits.

DECISION:

The representative's decision dated January 28, 2011, reference 01, is affirmed. The claimant did have reasonable assurance of returning to work the following academic term. Benefits are denied.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw