

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 04A-UI-02133-SWT
OC 01/04/04 R 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.1(113)a - Layoff
Section 96.4-5-b – School Employee Between Academic Terms

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 16, 2004, reference 01, that concluded that benefits were allowed to the claimant because she had not offered reasonable assurance of school employment. A telephone hearing was held on April 30, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Steven Weidner participated in the hearing on behalf of the employer with a witness, John Clopton. Exhibits One through Three were admitted into evidence at the hearing.

FINDINGS OF FACT:

The employer is a community college educational institution in Waterloo, Iowa. The claimant has worked as a part-time instructor for the college since January 10, 2000. She taught two

classes during Fall 2002 semester, two courses during the Spring 2003 semester, and two classes during the Fall 2003 semester.

Because the claimant had taught two semesters with 16 credit hours or 28 contact hours each, her status changed from adjunct instructor to regular part-time instructor effective August 25, 2003. This status change provided the claimant with fringe benefits including insurance, educational benefits, and coverage under the continuing contract provisions of Iowa Code Section 279.13 and 15. Part-time instructors are not guaranteed that they will teach a class, because the number of classes and instructors depend on budget and enrollment.

The claimant had been asked by the department chair to teach three classes for the Spring 2004 semester—Principles of Illustration, Design and Layout, and a new course for the claimant, Portfolio Preparation. Classes were to start on January 11, 2004. On January 7, 2004, the employer informed the claimant that she would not be teaching any classes because the employer did not need any instructors beyond the full-time instructors. The Spring 2004 semester ended May 14, 2004.

The claimant has reasonable assurance of re-employment as a part-time instructor in the 2004-2005 school year, since the employer had taken no action to terminate her employment by April 30, 2004. The period between academic years is from May 15 to August 23, 2004. The claimant has not voluntarily quit employment, has not been discharged for misconduct, and has not refused any offered work with the employer.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 4, 2004. Her claim is based exclusively on the wages paid to the claimant by the employer during the period from October 1, 2002, through September 30, 2003. The claimant filed for and received a total of \$3,138.00 for the weeks between January 4 and May 1, 2004. The claimant has not claimed any benefits since the week ending May 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer, are discharged for work-connected misconduct, or fail to accept suitable work without good cause. Iowa Code Sections 96.5-1, 96.5-2-a, and 96.5-3. None of these disqualification provisions apply to the claimant.

871 IAC 24.1(113)a provides:

- a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant's separation is a layoff due to lack of work, and she is qualified to receive unemployment insurance benefits provided she is otherwise eligible. The fact that the claimant maintains an attachment to the employer entitling her to certain employment benefits does not change the result since this is not uncommon for a temporarily laid-off worker. Likewise, the fact that the claimant knows upfront that she is not guaranteed to teach is no different than any

other worker who has no guarantee of employment. The law does not limit unemployment insurance benefits to workers who have permanent jobs or are unemployed unexpectedly.

Finally, Iowa Code Section 96.4-5-a provides that a person employed by an educational institution in an instructional or administrative capacity during one academic year or term who has a contract or reasonable assurance of employment in the same capacity in the next academic year or term is ineligible for benefits based on such employment during the time between academic years or terms or a similar period.

This statute and the case law interpreting it make it clear that the "reasonable assurance" disqualification does not apply to the claimant since she filed her claim for benefits effective January 4, 2004, not "between academic years or terms." The case law makes it clear that the purpose of the statute is "to prevent subsidized summer vacations for those teachers who are employed during one academic year and who are reasonably assured of resuming their employment the following year." Leissring v. Dept. of Ind., Labor, and Human Rel., 340 N.W.2d 533, 539 (Wis. 1983). See Merged Area (Educ.) v. Dept. Of Job Service, 367 N.W.2d 272, 275 (Iowa Ct. App. 1985). The claimant filed her claim during the academic year because the employer had no work for her. She is not subject to disqualification under Iowa Code Section 96.4-5.

Iowa Code Section 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual is still employed by a base period employer at the time the individual is receiving the benefits and is receiving the same employment from the employer that the individual received during the individual's base period or the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The employer's account shall be charged for benefits paid to the claimant because it did not provide her with the same employment as it did in the base period.

DECISION:

The unemployment insurance decision dated February 16, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is subject to charge.

saw/kjf