

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA C FAY

Claimant

APPEAL NO. 15A-UI-08107-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPENCER COMMUNITY SCHOOL DISTRICT

Employer

OC: 06/15/14

Claimant: Appellant (1)

Section 96.4-5-b – Benefits During Successive Academic Terms

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Angela Fay (claimant) appealed a representative's June 26, 2015, decision (reference 06) that concluded she was not eligible to receive unemployment insurance benefits for weeks between successive academic terms with Spencer Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held for July 30, 2015. The claimant participated personally. The employer participated by Ronda Mortenson, Payroll/Human Resources Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant is between successive terms with an educational institution.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 5, 2013, as a substitute teacher. She worked the 2013-2014 and the 2014-2015 terms. The employer also plans on her return for the next school year. The claimant has a reasonable assurance of returning.

A disqualification decision was mailed to the claimant's last-known address of record on June 26, 2015. She did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 6, 2015. The appeal was filed July 5, 2015, but IWD could not locate it. The claimant filed another appeal on July 17, 2015, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The claimant filed an appeal within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

For the reasons that follow the administrative law judge concludes the claimant is between successive terms with an educational institution.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) 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.

Iowa Admin. Code r. 871-24.22(2)i(2) provides:

Benefit 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.

i. On-call workers.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

The claimant is employed by an educational institution. The claimant worked for the 2014-2015 academic year and is expected to work for the 2015-2016 academic year. The two terms are successive terms. The claimant is between successive terms with an educational institution.

DECISION:

The representative's June 26, 2015, decision (reference 06) is affirmed. The appeal in this case was timely. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css