

**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**

**PENNY M WIESE
412 – 10TH ST
BELLE PLAINE IA 52208**

**BELLE PLAINE COMMUNITY
SCHOOL DISTRICT
ADMINISTRATION BUILDING
ATTN SECRETARY
1303 – 2ND AVE
BELLE PLAINE IA 52208**

**Appeal Number: 05A-UI-06305-RT
OC: 05-08-05 R: 03
Claimant: Respondent (4)**

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)

Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.7-2-a-2 – Employer Contributions and Reimbursements (Same Employment – Benefits Not Charged)
Section 96.4-5 – Benefits Based on Service for an Educational Institution

STATEMENT OF THE CASE:

The employer, Belle Plaine Community School District filed a timely appeal from an unemployment insurance decision dated June 9, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Penny M. Wiese, and not relieving the employer of charges for the benefits to which the claimant is entitled. After due notice was issued, a telephone hearing was held on July 5, 2005, with the claimant participating. Charmaine Wickwire, Business Manager, participated in the hearing for the employer. The administrative law judge

takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was and still is employed as a part-time, on-call, substitute cook, secretary, and associate. The claimant has not permanently separated from her position. The claimant is not currently working for the employer because she is between academic years or terms since the employer is a school district and educational institution. The claimant is and remains on the substitute list and will remain on the substitute list for the new school year, 2005-2006 and will be called as needed as she was in the prior school year, 2004-2005. The employer has done nothing to indicate to the claimant otherwise and the employer fully intends to utilize the claimant as it had done so in the past.

The claimant has placed no physical restrictions or training restrictions on her ability to work and has placed no restrictions on the days or times when she could or could not work or on her availability for work. The claimant is earnestly and actively seeking full-time work by making two in-person job contacts each week.

The claimant is otherwise monetarily eligible to receive unemployment insurance benefits by earnings from her regular full-time employer, Benco Manufacturing having earnings from the employer per Iowa Workforce Development records as follows: \$7,070.84 in the first quarter of 2004; \$8,628.67 for the second quarter of 2004; \$8,520.03 in the third quarter of 2004; \$8,787.02 in the fourth quarter of 2004; and \$7,403.16 in the first quarter of 2005. The claimant was laid off for a lack of work from Benco Manufacturing on November 9, 2004, when her position was eliminated. Thereafter the claimant received severance pay from the employer, which is reflected in the earnings above. Pursuant to her claim for unemployment insurance benefits filed effective May 8, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,576.00 as follows: \$322.00 per week for eight weeks from benefit week ending May 14, 2005 to benefit week ending July 2, 2005. The claimant reported earnings from the employer herein, for two weeks, benefit weeks ending May 21 and 28, 2005 but those earnings were too small to reduce her weekly benefit amount for those weeks. The earnings from the employer herein have not been used to determine the claimant's weekly benefit amount of \$322.00.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is still employed by an educational institution between two successive academic years or terms and had reasonable assurance of continuing employment and, therefore, would be ineligible to receive unemployment insurance benefits between the two successive academic years or terms. The claimant is still employed by an educational institution between two successive academic years or terms and she did have reasonable assurance of continued work in the ensuing new school year, 2005-2006 but because the claimant's employment with the employer was at all material times hereto part-time and on-call, and because the claimant is otherwise monetarily eligible to receive unemployment insurance benefits, the claimant is not ineligible to receive unemployment insurance benefits.

2. Whether the claimant is ineligible to receive unemployment insurance benefits because she is and was at relevant times not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for these reasons.

3. Whether the account of the employer should be charged for any unemployment insurance benefits to which the claimant is entitled because the claimant was not receiving the same employment that she received during her base period. The claimant is receiving the same employment that she received during the base period and the account of the employer herein should not be charged for any unemployment insurance benefits to which the claimant is entitled.

Iowa Code section 96.4-5-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:

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.

871 IAC 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.

The administrative law judge concludes that the claimant is employed by an educational institution. The employer is a community school district and is clearly an educational institution. The claimant is now not working or is unemployed between academic years or terms for the employer, an educational institution. The claimant has reasonable assurance that she will be performing the same or similar services for the employer in the new academic year or term,

2005-2006, that she performed in the prior academic year, 2004-2005. However, the claimant's employment was only part-time, on-call and has always been part-time, on-call. The claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on non school wage credits from her regular employer, Benco Manufacturing as set out in the findings of fact. Therefore, the claimant is not disqualified or ineligible to receive unemployment insurance benefits but any unemployment insurance benefits to which the claimant is entitled shall not be based on wages paid by the employer herein, an educational institution and any unemployment insurance benefits to which the claimant is entitled shall not be charged against the account of the employer herein, an educational institution. See 871 IAC 24.52(6). The part-time earnings from the employer herein have not been used to determine the claimant's unemployment insurance benefits or weekly benefit amount and it is not now necessary to remand this matter for a redetermination of her unemployment insurance benefits and her weekly benefit amount. Therefore, the administrative law judge concludes that the claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, but any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended 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.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's

employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she is and was at relevant times, able, available, and earnestly and actively seeking work. The claimant credibly testified that she has placed no restrictions on her ability to work or her availability to work and that she is earnestly and actively seeking full-time work by making two in-person job contacts each week. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits. The claimant is working part-time on-call for the employer herein but the administrative law judge concludes that this does not interfere with the determination that the claimant is able, available, and earnestly and actively seeking work, because the claimant was laid off from her full-time regular employer. Unemployment insurance benefits are allowed to the claimant, provided she remains able, available, and earnestly and actively seeking work and is otherwise eligible and entitled to such benefits.

The administrative law judge further concludes that the claimant is receiving the same employment from the employer that she always has, part-time, on-call as a substitute and that this was the same employment the claimant has received throughout her employment and during her base period. Therefore, the administrative law judge concludes that any unemployment insurance benefits to which the claimant is entitled shall not be charged against the account of the employer herein.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant is entitled to receive unemployment insurance benefits, provided she remains able, available, and earnestly and actively seeking work but that any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the part-time employer herein because she is receiving the same work that she has always received from the part-time employer herein and further because the part-time employer herein is an educational institution and the claimant is not working between two successive academic years or terms but has reasonable assurance of performing the same or similar services in the new academic year or term, 2005-2006 as she did in the prior academic year or term, 2004-2005.

DECISION:

The representative's decision of June 9, 2005, reference 01, is modified. The claimant, Penny M. Wiese, is entitled to receive unemployment insurance benefits, provided she remains able, available, and earnestly and actively seeking work and is otherwise eligible to receive such benefits. However, any unemployment insurance benefits to which the claimant is entitled shall not be based on wages paid by the part-time employer herein and the account of the part-time employer herein shall not be charged for any unemployment insurance benefits to which the claimant is entitled because the claimant is a part-time employee of an educational institution and is between academic years or terms but has reasonable assurance of providing the same or similar services in the new academic year, 2005-2006, as she did in the prior academic year, 2004-2005 and further, because the claimant is receiving the same employment from the employer herein as she has always received.

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