

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA K MULLER
Claimant

APPEAL NO: 10A-UI-10546-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STRATFORD COMMUNITY SCHOOL DIST
Employer

OC: 05/30/10
Claimant: Appellant (2)

Section 96.4-(5)b – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant appealed a representative's July 20, 2010 decision (reference 01) that held her ineligible to receive benefits because she had reasonable assurance of returning to work for the employer, an educational institution, in the August 2010. A telephone hearing was held on September 10, 2010. The claimant participated in the hearing. Linda Swedlund, the board secretary/business manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant ineligible to receive benefits as of May 30, 2010, because she has reasonable assurance of working for the employer in August 2010?

FINDINGS OF FACT:

The claimant started working January 2007 as a childcare provider. The employer took over the daycare facility in September 2007. The claimant has continued working as a care giver at the daycare facility. In previous years, the claimant has worked at the daycare facility as a care giver during the summer months or she has worked 12 months a year.

Although other care givers were allowed to work during the summer of 2010, the claimant, the employee with the most seniority, learned from the school superintendant at the end of the school year she would be laid off during the summer months of 2010. The claimant was called back to work and signed a contract in late August 2010 to again work as a childcare provider at the daycare. The claimant is currently working as a childcare provider as she has always done.

The claimant established a claim for benefits during the week of May 30, 2010. She has filed claims for the summer months.

REASONING AND CONCLUSIONS OF LAW:

Benefits based on service in any other capacity (instructional, research, or principal administrative) for an education institution, including service in or provided to or on behalf of an educational institution shall not be paid for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the service in the first academic year and has reasonable assurance of performing services second academic year. Iowa Code 96.4-5(b). This law covers cooks, custodians and childcare providers. Iowa Code section 96.4-5(a) applies to teachers and administrators.

An educational institution employee who perform services on a 12-month year round basis whose employment is terminated through layoff or reduction in force prior to the completing the 12-month period, is eligible for benefits and will not be disqualified under Iowa Code section 96.4-5(b). An offer of reemployment for the succeeding academic year will not result in imposing a disqualification prior to the date in which the employment begins again. 871 IAC 24.52(5).

The evidence shows that until the summer of 2010, the claimant worked during the summer months at the daycare facility. The evidence does not establish why the claimant, who has the most seniority, was not allowed to work the summer of 2010 when she had worked all previous years during the summer months. Since the claimant was hired to work 12-months a year and there is no indication she signed a contract for the 2009/2010 school year that she would only be working nine months, the facts indicate the employer placed the claimant on a lay off status during the summer months of 2010.

If the claimant's contract for the 2010/2011 school year indicates she only works nine-months and the claimant establishes a claim at the end of the school year in May 2011, the outcome may be different. However, as of May 30, 2010, the claimant is eligible to receive benefits because the employer laid her off during the summer months when she was working as 12-month year round employee.

DECISION:

The representative's July 20, 2010 decision (reference 01) is reversed. Although the claimant works for an educational institution, as a 12-month employee for the 2009/2010 school year, she is eligible to receive benefits as of May 30, 2010, provided she meets all other eligibility requirements. As a 12-month employee the provisions in Iowa Code section 96.4-5-b do not apply.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs