

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI L MOELLER
Claimant

APPEAL NO. 07A-UI-01606-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OELWEIN COMMUNITY SCHOOL DISTRICT
Employer

**OC: 12/31/06 R: 04
Claimant: Appellant (4R)**

Section 96.4(5) – Between Academic Terms Disqualification
Section 96.7(2)(a)(2) –Still Employed - Same Hours, Same Wages
871 IAC 23.43(4)(a) –Part-time Supplemental Employment

STATEMENT OF THE CASE:

Kristi Moeller filed a timely appeal from the February 8, 2007, reference 04, decision that denied benefits effective December 31, 2006 based on a between academic terms disqualification. After due notice was issued, a hearing was held on February 28, 2007. Ms. Moeller participated. Joan Loew, Business Manager and Board Secretary, represented the employer and presented additional testimony through Dee Dienst, Principal. The administrative law judge took official notice of the Agency's administrative records concerning the claimant's base period employment and wage credits, as well as claims representative decisions entered in connection with the claim.

The claimant has similar appeals pending in appeal numbers 07A-UI-01604-JTT and 07A-UI-01605-JTT. All three decisions should be considered together. A decision in appeal number 07A-UI-01604-JTT, concerning Ms. Moeller's employment with the Independence Community School District, will enter at the same time as the present decision. The hearing in appeal number 07A-UI-01605-JTT, concerning Ms. Moeller's employment with the Dunkerton Community School District has been delayed to March 19, 2007, due to severe weather, and a decision in that matter will follow as soon as practicable after the hearing.

ISSUES:

Whether Ms. Moeller's eligibility for unemployment insurance benefits is subject to the between academic terms disqualification set forth at Iowa Code section 96.4(5).

Whether Ms. Moeller is still employed with the Oelwein Community School District under the same conditions that existed during her base period.

Whether Ms. Moeller's employment with the Oelwein Community School District was part-time, supplemental employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kristi Moeller has been employed by the Oelwein Community School District as an on-call substitute teacher for four years and continues in the employment. The District's winter break began on December 22, 2006 and ended on January 4, 2007. At all relevant times, Ms. Moeller and the School District anticipated and understood that Ms. Moeller would continue to serve the School District as an on-call substitute teacher.

Ms. Moeller established a claim for benefits that was effective December 31, 2006. The application for benefits was prompted by Ms. Moeller's separation from her primary non-academic employment at The Neighborhood Perk. Ms. Moeller separated from her employment with The Neighborhood Perk on December 29, 2006.

Ms. Moeller's base period wage credits are based on Ms. Moeller's part-time supplemental employment with three school districts and her primary non-academic employment with The Neighborhood Perk.

REASONING AND CONCLUSIONS OF LAW:

This case concerns the between academic terms disqualification provision applicable to professional employees of educational institutions as well as the law pertaining to part-time supplemental employment. During the benefit week that ended January 6, 2007, the between terms disqualification provision is of central importance. Thereafter, the part-time supplemental nature of the school employment is of central importance.

Iowa Code section 96.4-5-a 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.

Iowa Code section 96.4-5-c 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:

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

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.

In Iowa Code section 96.4(5), the term "established and customary" vacation period or holiday recess involved in this provision includes those scheduled at Christmas and in the spring, when those vacation periods or recesses occur within a term. 871 IAC 24.51(8)

Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods. 871 IAC 24.52(10)(a).

If an individual to whom 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. Iowa Code section 96.7(2)(a)(2). An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, supplemental, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account may be relieved of benefit charges. 871 IAC 23.43(4)(a).

Finally, 871 IAC 24.52(13) provides as follows:

Continuing supplemental (part-time) school employment after loss of non-school employment. All employers, including employers of part-time workers are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer

account, whether contributory or reimbursable, pursuant to Iowa Code section 96.7(2)(a)(2).

The evidence in the record establishes that Ms. Moeller had reasonable assurance of continued employment with the Oelwein Community School District during the winter break period of December 22, 2006 to January 4, 2007. During that period, Ms. Moeller would be disqualified for benefits that were "based on" her employment with the school district. See Iowa Code section 96.4(5)(a) and (c). Because Ms. Moeller's claim for unemployment insurance benefits was not established until December 31, 2006, the only week affected by the between terms disqualification would be the benefit week that ended January 6, 2007. During that week, Ms. Moeller would continue to be eligible for reduced benefits "based on" her non-academic employment with The Neighborhood Perk, provided she was otherwise eligible. This matter will be remanded so a claims representative can calculate the reduced weekly benefit amount for which Ms. Moeller was eligible during the benefit week that ended January 6, 2007.

The evidence indicates that Ms. Moeller remains in the employ of the School District and is receiving the same part-time, supplemental employment from the School District that she received during her base period. Effective the benefit week that ended January 13, 2007, Ms. Moeller would be eligible for full unemployment insurance benefits, provided she was otherwise eligible. See 871 IAC 23.43(4)(a). The School District, as the part-time supplemental employer would be relieved of charges for benefits paid to Ms. Moeller. See 871 IAC 23.43(4)(a).

DECISION:

The claims representative's February 8, 2007, reference 04, is modified as follows. During the benefit week that ended January 6, 2007, the claimant was subject to the between academic terms disqualification provision and would not be eligible for benefits based on the employment with the Oelwein School District. During the benefit week that ended January 6, the claimant would be eligible for reduced benefits based her non-academic employment with The Neighborhood Perk, employer account number 343999, provided she was otherwise eligible. This matter is remanded so a claims representative can calculate the reduced weekly benefit amount for which claimant was eligible during the benefit week that ended January 6, 2007.

Beginning with the benefit week that ended January 13, 2007, the claimant is eligible for full benefits, provided she is otherwise eligible. The Oelwein Community School District shall be relieved of liability for benefits on the claim.

The claimant has similar appeals pending in appeal numbers 07A-UI-01604-JTT and 07A-UI-01605-JTT. All three decisions should be considered together. A decision in appeal number 07A-UI-01604-JTT, concerning Ms. Moeller's employment with the Independence

Community School District, will enter at the same time as the present decision. The hearing in appeal number 07A-UI-01605-JTT, concerning Ms. Moeller's employment with the Dunkerton Community School District has been delayed to March 19, 2007, due to severe weather, and a decision in that matter will follow as soon as practicable after the hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs