

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA J ELAND
Claimant

APPEAL NO. 13A-UI-00334-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHEASTERN COMMUNITY COLLEGE
Employer

OC: 11/25/12
Claimant: Respondent (2R)

Section 96.4-5-E – Reasonable Assurance Between Academic Terms or Semesters

STATEMENT OF THE CASE:

Southeastern Community College filed a timely appeal from a representative's decision dated January 3, 2013, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 3, 2013. Although Ms. Eland submitted a telephone number she was not available at the telephone number provided. Two messages were left for the claimant. The employer participated by Ms. Michelle Foster, Human Resource Director.

ISSUE:

The issue is whether the claimant had reasonable assurance of performing services for an educational institution in the next academic term or year.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Rebecca Eland began employment with the Southeastern Community College in August of 2004. Ms. Eland is employed as an adjunct teacher.

The claimant's most recent period of employment began in August 2012 and ended in October 2012. Ms. Eland was paid through October 31, 2012. Ms. Eland was performing services as an instructor teaching a nurse's aide class. Prior to the end of the 2012 academic term, Ms. Eland was given assurance of continued employment in the next academic term in the same or similar capacity with Southeastern Community College. Ms. Eland accepted the offer of employment in the next academic term and continues to be employed by Southeastern Community College at the time of hearing in the same or similar capacity as her previous employment with Southeastern Community College.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant did have reasonable assurance of returning to work the following academic term.

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.

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 evidence in the record establishes that Ms. Eland did have reasonable assurance of continuing employment for the 2013 term as an adjunct instructor at Southeastern Community College and therefore is ineligible to receive unemployment insurance benefits between terms under the provisions of the law.

The employer's witness testified that the claimant was given reasonable assurance of continued employment in her same or similar capacity prior to the end of her teaching classes during the fall 2012 term. Ms. Foster testified that the claimant accepted the assurance of continued employment and began employment for the 2013 academic term and is employed in the same or similar capacity for Southeastern Community College at the time of hearing. There being no evidence to the contrary, the administrative law judge concludes that the claimant was given reasonable assurance of continued employment during the next academic term and, therefore, is ineligible to receive unemployment insurance benefits between terms.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 3, 2013, reference 02, is reversed. The claimant did have reasonable assurance of returning to work for the following academic term. Benefits are denied. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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