

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEISLAVA S STOYCHEVA
Claimant

APPEAL 17A-UI-06158-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE COMMUNITY COLLEGE
Employer

**OC: 05/14/17
Claimant: Respondent (2R)**

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 12, 2017, (reference 02) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 30, 2017. Claimant did not participate, but was represented by her friend Jason Proste. Employer participated by Janine Knapp, Human Resources Assistant Director.

ISSUE:

Does the claimant have reasonable assurance of continued employment in the next school term or year?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed as an adjunct professor for the employer during the September, 2016 – December, 2016 semester. Claimant has no other regular non-educational institution employment wage credits in the base period. She is not monetarily eligible for benefits based upon the wages other than educational wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did have reasonable assurance of returning to work the following academic term or year. The claimant does not have other non-educational institution wages in the base period that would make her otherwise eligible for benefits.

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.

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.

The U.S. DOL issued Program Letter No. 5-17 on December 22, 2016, that sets out guidance for the department interpretation of the Federal Unemployment Tax Act (FUTA) as it applies to institutions of higher education and part-time, adjunct or contingent faculty. It sets out three factors required for a reasonable assurance determination. First, a genuine offer of employment from a person with authority may be written, oral or implied. Second, the employment offered must be in the same capacity (e.g. professional or non-professional) as held in the previous term. Third, the economic conditions offered may not be "considerably less" than in the prior term. The letter defined "considerably less" as not earning at least 90 percent of the amount earned in the earlier academic year or term. It goes on to examine whether contingencies within the offer are within the employer's control as a means to determine if the claimant has reasonable assurance of continued employment. Circumstances such as enrollment, funding and seniority are not considered to be within the employer's control. The letter requires analysis of the "totality of circumstances" to determine whether it is "highly probable" that there is a job available for claimant the following academic term. It also requires weight be given to the contingency of the offer and if it is "highly probable" that the contingency will be met. https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8999

Where a claimant did not work over the summer for a community college which held a summer session, the Court still denied benefits because of the "summer vacation." *Merged Area VII v. Iowa Dep't of Job Serv.*, 367 N.W.2d 272, 274, 275 (Iowa Ct. App. 1985).

In this case, the claimant does not have other non-educational institution wage credits in the base period. The claimant does have reasonable assurance of continued employment for by an implied agreement for the fall semester beginning in September, 2017. Since claimant does not have other non-educational institution wage credits in the base period and does have reasonable assurance of continued employment for the 2017 fall term, she is not considered unemployed. Benefits are denied.

DECISION:

The June 12, 2017, (reference 02) unemployment insurance decision is reversed. The claimant does have reasonable assurance of returning to work the following academic year or term. Benefits are denied.

REMAND: The overpayment issue as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/rvs