

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

JAMES W LONG  
306 CLARK ST  
SOUTH ENGLISH IA 52335

KIRKWOOD COMMUNITY COLLEGE  
ATTN PERSONNEL  
PO BOX 2068  
CEDAR RAPIDS IA 52406

Appeal Number: 06A-UI-01074-CT  
OC: 12/18/05 R: 03  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(5)c – School Employment

STATEMENT OF THE CASE:

James Long filed an appeal from a representative's decision dated January 24, 2006, reference 01, which denied benefits on a finding that he was a school employee claiming benefits during an established holiday recess. After due notice was issued, a hearing was held by telephone on February 15, 2006. Mr. Long participated personally. The employer participated by Barb Christopherson, Human Resources Specialist, and Bob Freeman, Director of Human Resources.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Long has been employed by Kirkwood

Community College (KCC) for 3.5 years. He is an instructor in driver education, primarily training truck drivers. He usually teaches year-round in classes usually lasting four weeks. Historically, the winter recess is when students take diesel technician or agriculture classes taught by instructors such as Mr. Long. There usually are not as many classes taught during the winter break as during other times of the year.

On December 13, 2005, Mr. Long was asked to leave work early because there was not enough work. He was told to call in each day that week to see if he was needed. He was later told not to return until January 3. The KCC campus closed for regular classes on December 23, 2005. Faculty members were expected back on January 3 and classes resumed on January 9, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Long is entitled to receive job insurance benefits on his claim filed effective December 18, 2005. He filed his claim prior to December 23, 2005, the beginning of KCC's winter break. He had been sent home early on December 13 to due lack of work. Inasmuch as the employer did not have work for Mr. Long during the week ending December 24, and because it was prior to the start of the recess, he is entitled to job insurance benefits for that week.

Mr. Long's entitlement to job insurance benefits effective December 25, 2005 is controlled by the provisions of Iowa Code section 96.4(c).

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.

The law is clear that job insurance benefits are not payable to a school employee during a customary holiday recess if services were performed prior to the recess and there is reasonable assurance that services will be performed in the period immediately following the holiday recess. There was no dispute that Mr. Long performed services prior the recess. Nor was there any dispute that he was expected to perform services after the recess. The administrative law judge has considered the fact that Mr. Long usually works year-round. It must also be considered that there is less work available during the winter holiday recess. The fact that there is less work available to Mr. Long during holiday recess is inextricably bound with the fact that the main campus is closed for classes during this period. In short, he is

unemployed because there was no work available for him due to the fact that fewer classes are taught during the winter holiday recess. By way of analogy, a teacher who has taught summer school in the past does not become eligible for job insurance benefits during a summer break simply because summer school classes are not available during that particular summer.

After considering all of the evidence, the administrative law judge concludes that Mr. Long was unemployed beginning December 25, 2005, because KCC was on holiday break. Therefore, as a school employee, wage credits earned with KCC may not be used on his claim beginning December 25, 2005. He remains eligible to receive benefits for the week ending December 24, 2005.

DECISION:

The representative's decision dated January 24, 2006, reference 01, is hereby modified. Mr. Long is entitled to benefits from December 18 through December 24, 2005 as he was unemployed due to a lack of work. Wage credits earned with KCC may not be used to determine eligibility for benefits effective December 25, 2005.

cfc/kjw