

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL LUNDY
Claimant

APPEAL NO: 09A-UI-15798-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NODAWAY VALLEY COMMUNITY
SCHOOL DISTRICT**
Employer

OC: 01-25-09
Claimant: Respondent (2R)

Section 96.4-5 – Reasonable Assurance
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the July 8, 2009, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 23, 2009. Peggy Erke, the claimant's daughter, participated in the hearing on the claimant's behalf because he is hearing impaired. Sharon Cox, Board Secretary/Business Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the employer's appeal is timely and whether the claimant received a reasonable assurance for employment in the next academic year.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision allowing benefits to the claimant was mailed to the employer's last-known address of record on July 8, 2009. The employer did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 18, 2009. That date, however, fell on a Saturday so the appeal was actually due July 20, 2009. The appeal was not filed until October 15, 2009, which is after the date noticed on the disqualification decision. The employer was not notified of a fact-finding interview or the July 8, 2009, decision stating the claimant was eligible for benefits due to a change in his hours and wages before the claimant started receiving benefits again the week ending May 30, 2009. Because the employer never received the decision stating the claimant was eligible for benefits, and was not aware the claimant was receiving benefits until it received its quarterly statement of charges, the administrative law judge concludes the employer's appeal is timely.

The claimant was employed as a school bus driver for the Nodaway Valley Community School District during the 2008-2009 school year. He signed a contract for the 2009-2010 school year June 3, 2009. He returned to his job as a bus driver when school started this fall.

The claimant has claimed and received unemployment insurance benefits since the week ending May 30, 2009, when the school year ended.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.4-5-b 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:

b. Benefits based on service in any other capacity for 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 terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

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 claimant had a reasonable assurance of returning to work during the 2009-2010 school year because he was offered a contract in the spring of 2009 for the 2009-2010 school year and signed and returned that contract June 3, 2009.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did

not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The July 8, 2009, reference 03, decision is reversed. The employer's appeal is timely and the claimant did have a reasonable assurance of returning to work for the 2009-2010 academic year. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits since the week ending May 30, 2009, but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css