

**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**

**MARJORIE R STRANG  
24159 HWY 151 WEST  
CASCADE IA 52033**

**MONTICELLO-SACRED HEART  
ATTN MARGI PRICKETT  
530 – 42<sup>ND</sup> ST  
DES MOINES IA 50312**

**Appeal Number: 05A-UI-07683-RT  
OC: 07-03-05 R: 03  
Claimant: Appellant (1)**

**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 – Benefits Based on Service for an Educational Institution

STATEMENT OF THE CASE:

The claimant, Marjorie R. Strang, filed a timely appeal from an unemployment insurance decision dated July 22, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on August 12, 2005, with the claimant participating. Carrie Manternach, principal of the employer's school, Sacred Heart Catholic School, in Monticello, Iowa, participated in the hearing for the employer. The employer was represented by Paul Jahnke. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a substitute teacher in the fourth grade from September 21, 2004, until the school year ended on June 1, 2005. Although this was a long-term position, the claimant was at all material times hereto a substitute teacher in the 2004-2005 school year. She ceased working for the employer on June 1, 2005, when the school closed for the summer. A letter was sent to the claimant on July 20, 2005, indicating that the claimant would be considered as a substitute teacher for the employer in the upcoming school year, 2005-2006, as she had been as a substitute teacher in the 2004-2005 school year. The employer asked that the claimant return the form if she wished to be a substitute teacher in the new school year. The claimant did not return the form but called the school and spoke to a third grade teacher and left a message for the employer's witness, Carrie Manternach, Principal, indicating that she did want to remain as a substitute teacher for the employer for the 2005-2006 school year. The employer is Sacred Heart Catholic School, a parochial school accredited and approved as such by the Iowa State Department of Education. It has grades from pre-kindergarten through the sixth grade. As a substitute teacher the claimant's primary function is to provide instructional services.

Pursuant to her claim for unemployment insurance benefits filed effective July 3, 2005, the claimant has received no unemployment insurance benefits. During the base period for the unemployment insurance claim effective July 3, 2005; the claimant has received no earnings from any employer other than schools or school districts. In addition to the employer herein, the claimant had earnings from three different school districts but no non-school earnings.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is still employed by an educational institution between two successive academic years or terms and had reasonable assurance that she would be performing the same or similar services in the new academic year or term that she did in the prior academic year or term and therefore would be ineligible to receive unemployment insurance benefits between the two successive academic years or terms. The administrative law judge concludes that the claimant was employed by an educational institution between two successive academic years or terms and had reasonable assurance that she would be performing services in the new academic year or term as she did in the prior academic year or term and is therefore ineligible to receive unemployment insurance benefits between the two successive academic years or terms.

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 administrative law judge concludes that there is a preponderance of the evidence that the claimant was employed by an educational institution performing instructional services as a substitute teacher and she has reasonable assurance that she will be performing the same or similar services as a substitute teacher for the employer for the new or ensuing academic year or term, 2005-2006, that she did in the prior academic year or term, 2004-2005. The evidence establishes that the employer is a parochial school accredited and approved as such by the Iowa State Department of Education and is therefore an educational institution. See 871 IAC 24.51(1). The evidence also establishes that the claimant was employed by the employer as a substitute teacher in the 2004-2005 school year. The claimant's employment was long-term, but this does not change the character of the claimant's employment as a substitute teacher. Substitute teachers are professional employees and are subject to the same limitations as other professional employees in regards to reasonable assurance. See 871 IAC 24.52(10). The claimant received a letter from the employer dated July 20, 2005, indicating that she would be permitted to act as a substitute teacher for the employer in the upcoming or new school year, 2005-2006, as she had in the prior school year, 2004-2005. Although the claimant did not sign and return the form enclosed, she called the employer and indicated in the affirmative that she wanted to remain as a substitute teacher for the employer. Accordingly, the administrative law judge concludes that the claimant has reasonable assurance that she will be performing the same or similar services as a substitute teacher in the new or ensuing school year, 2005-2006, as she did in the prior school year, 2004-2005. Reasonable assurance does not have to be a written contract but it is sufficient if there is an implied agreement. There appears to be more than even an implied agreement here that the claimant will perform the same services as she had previously.

Accordingly, the administrative law judge concludes that the claimant is temporarily unemployed or off work with an educational institution between two successive academic years or terms and she has reasonable assurance that she will be providing the same services for the employer in the new academic year or term, 2005-2006, as she did in the prior academic year or term, 2004-2005. Therefore, the administrative law judge concludes that the claimant is ineligible to receive unemployment insurance benefits between the two successive academic years or terms.

The administrative law judge specifically notes that the claimant does not have any earnings or wage credits in her base period from non-school employers and therefore is not otherwise entitled to receive unemployment insurance benefits based on sufficient non-school wage credits. See 871 IAC 24.52(6).

DECISION:

The representative's decision of July 22, 2005, reference 01, is affirmed. The claimant, Marjorie R. Strang, is not entitled to receive unemployment insurance benefits, until or unless she demonstrates that she is otherwise eligible for such benefits, because she is off work or temporarily unemployed with an educational institution between successive years or terms and has reasonable assurance that she will be performing the same or similar services in the new school year, 2005-2006, as she did in the prior school year, 2004-2005.

dj/kjw