

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

ALAN B AKEMAN
APT 13
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URBANDALE IA 50322 3965

WAUKEE COMMUNITY SCHOOL DIST
560 SE UNIVERSITY
WAUKEE IA 50263

Appeal Number: 06A-UI-06150-DWT
OC: 05/21/06 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-5 – Reasonable Assurance
871 IAC 24.23(26) – No Change in Part-time Employment

STATEMENT OF THE CASE:

Alan B. Akeman (claimant) appealed a representative's June 8, 2006 decision (reference 02) that concluded he is not eligible to receive benefits because the claimant still works for Waukee Community School District (employer) as was contemplated when the claimant accepted work as an on-call substitute and cannot be considered partially unemployed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 6, 2006. The claimant participated in the hearing. Bruce Kimpston appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible to receive benefits as of May 21, 2006, when he works for the employer as a substitute teacher and intends to work in this capacity again during the 2006/2007 school year?

Is the claimant partially unemployed since he agreed to work as an on-call substitute teacher?

FINDINGS OF FACT:

The claimant started working as an on-call substitute teacher for the employer in February 2004. The claimant has continued to work as an on-call substitute teacher for the employer in each subsequent school year.

As a substitute teacher, the employer places the claimant's name on a list after the claimant informs the employer he is available to teach as the employer may need him. When a full-time teacher does not work on a school day, the employer calls people, such as the claimant, to work as an on-call substitute teacher. During the 2005-2006 school year, the claimant worked 31.5 days for the employer.

For the 2006-2007 school year, the employer sent the claimant a letter asking him to let the employer know if he was still available to work as a substitute teacher. The claimant plans to make himself available to again work as an on-call substitute teacher for the employer.

In addition to working for the employer, the claimant also works for two other schools as a substitute teacher. The claimant has a part-time job with another employer that is not an educational institution.

The employer does not allow any full-time teacher to take any personal time off the last two weeks of school. As a result, the employer does not need the services of any substitute teacher the last two weeks of school. The employer encourages full-time teachers to work as scheduled the first month of school. The claimant established a claim for unemployment insurance benefits during the week of May 21, 2006. The school year ended in late May. The 2006-2007 school year will start in mid- to late-August.

REASONING AND CONCLUSIONS OF LAW:

Benefits based on service in an instructional capacity in an educational institution shall not be paid to a claimant for any week of unemployment which begins during the period between two successive academic years if the claimant has a reasonable assurance he will perform in a similar capacity for the educational institution. Iowa Code section 96.4-5. Substitute teachers are professional employees and subject to the same limitations as other professional employees in regard to reasonable assurance provisions and the benefit denials between academic terms. However, substitute teachers are not automatically disqualified and may be eligible if they have wages other than on-call wages with an educational institution in the base period. 871 IAC 24.52(10) a, d.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. Where a claimant is still employed in a part-time job at the same hours

and wages as contemplated when the claimant accepted the employment, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26).

Since the claimant established his claim for benefits prior to the end of the 2005-2006 school year, he is potentially eligible to receive benefits for the week ending May 27, 2006. As of May 28, 2006, the claimant is not eligible to receive benefits based on wage credits he earned from the employer because this week starts the beginning of between academic year term.

As of May 21, 2006, the claimant is not eligible to receive benefits based on his employment with the employer, because he accepted work as an on-call substitute teacher and cannot be considered partially unemployed based on this employment.

The issue of whether the claimant is eligible to receive benefits based on his part-time employment with a non-educational employer will be addressed in a decision for appeal 06A-UI-06152-DWT.

DECISION:

The representative's June 8, 2006 decision (reference 02) is affirmed. The claimant is not eligible to receive benefits as of May 21, 2006, because he cannot be considered partially unemployed based on his employment as an on-call substitute teacher for the employer. As of May 28, the claimant is not eligible to receive benefits based on wage credits he earned from the employer because the employer is between academic school years and the claimant has a reasonable assurance of returning to work as a substitute teacher for the employer for the 2006-2007 academic school year.

dlw/pjs