

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**ROBERT C RAYMER**

Claimant,

and

**SPENCER COMM SCHOOL DIST**

Employer.

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**HEARING NUMBER: 13B-UI-09308**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION:** 10A.601 Employment Appeal Board Review

**D E C I S I O N**

**FINDINGS OF FACT:**

A hearing in the above matter was held September 17, 2013. The administrative law judge's decision was issued September 27, 2013. The administrative law judge's decision has been appealed to the Employment Appeal Board. The Board finds that decision issued addressed issues for which the parties did not have reasonable notice, and did not waive notice, and that the issue noticed for hearing was not addressed in the final order.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2013) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Pursuant to this authority we review this case and determine to remand it for further proceedings consistent with this decision.

The notice of hearing in this matter identified “reasonable assurance” as the issue for hearing, and cited to the Code provision on reasonable assurance. “Iowa Code section 17A.12 provides all parties to a contested case shall be afforded an opportunity for hearing after reasonable notice in writing. The notice shall include a reference to the particular sections of statutes and rules implicated and a short and plain statement of the matters asserted. Iowa Code §17A.12(2)(c) and (d).” *Silva v. Employment Appeal Board*, 547 N.W.2d 232, 235 (Iowa 1996). The plain language of §17A.12(2)(c) and (d) allows the hearing to proceed only on those issues that are identified in the Notice of Hearing. Here there is no question that the Notice only encompassed reasonable assurance under Iowa Code §96.4(5), and not any issues about monetary eligibility or about whether the Claimant was still employed at the same hours and wages, or was an on-call worker. In *Silva v. Employment Appeal Board*, 547 N.W.2d 232, 235 (Iowa 1996) the Court found notice on a quit does not necessarily give notice that discharge will be adjudicated. Similarly we think notice on between term denial does not encompass the other issues ruled upon by the Administrative Law Judge. Thus we remand on these issue. Since reasonable assurance was noticed, but not ruled upon, we also remand on the issue of reasonable assurance. Since the Employment Appeal Board is unable to adequately make a decision based on the record now before it, this matter must be remanded for a new hearing in order that evidence may be obtained from the parties.

We note some confusion caused by the decision in this matter. The decision states that the claims decision is “affirmed.” The claims decision was solely on the between terms issue, and disqualified on that basis. Yet the findings of fact make no mention of reasonable assurance or of the dates of the terms. The conclusions of law quote the between terms provision but make no application of it to the facts. We cannot see on what basis the claims disqualification, which would only apply over the time between the terms, is “affirmed.” Moreover, the decision portion of the opinion states that the “Claimant is not considered unemployed because of his on-call status.” But the findings of fact state that the Claimant had wage credits in the base period from full time work. The Administrative Law Judge cites rules in support of, and accurately states the proposition that “when the only base period wage credits are related to on-call work” then a substitute teacher is not considered unemployed. The rules state substitute teachers are not unemployed when their “wage credits in the base period consist exclusively of wages earned by performing on-call work...” 871 IAC 24.52(10)(c); *accord* 871 IAC 24.52(10)(d)(4)(no automatic disqualification where the substitute has “wages other than on-call wages with an educational institution in the base period”); 871 IAC 24.22(2)(i)(3)(not considered unemployed if “work is solely on-call work during the base period” so that “wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work”). Given the full-time wages in the base period we do not see how the Claimant is considered automatically disqualified under the cited provisions – so far as the record shows the base period wages do not consist “exclusively” of on-call wages, and he did not work “solely” on call work, and he did have “wage other than on-call wages” in the base period. It is true that where a claimant is receiving the “same employment” during the benefit year as received during the base period then the (part-time) base period employer is relieved of charges. Iowa Code §97.2(a)(2)(a); 871 IAC 23.43(4); 23.53(1)(e). We are unaware of a provision excluding such wages, or substitute teacher wages, from the eligibility calculation, however. Nevertheless, we cannot determine monetary eligibility as the issue should be remanded to claims, as the Administrative Law Judge indicated during the hearing. That being the case, there should also be a decision on the between terms denial.

## **DECISION:**

The decision of the administrative law judge dated September 27, 2013 is not vacated at this time, and remains in force unless and until the Department makes a differing determination pursuant to this remand.

This matter is **remanded** to an administrative law judge in the Workforce Development Center, Appeals Section to address the question of the between terms denial. The administrative law judge shall conduct a new hearing following due notice. After the hearing, the administrative law judge shall issue a decision that provides the parties appeal rights. The issue of monetary eligibility is **remanded** to Iowa Workforce Development, Claims Section to address the question of monetary eligibility, and the issue of whether the Claimant is an unemployed person within the meaning of the law.

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John A. Peno

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Cloyd (Robby) Robinson

RRA/fnv