

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRISTINE L BENNETT**  
Claimant

**UNIVERSITY OF NORTHERN IOWA**  
Employer

**APPEAL 17A-UI-05592-DL-T**  
  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/08/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 22, 2017, (reference 02) unemployment insurance decision that denied benefits based upon reasonable assurance of continued employment. The parties were properly notified about the hearing. A telephone hearing was held on June 13, 2017. Claimant did not participate because she is out of the country but designated her partner Timothy Farlow to represent her. Employer participated through employment manager Lisa Frush. Claimant's Exhibit A was received.

**ISSUE:**

Does claimant have reasonable assurance of continued employment in the next school term or year?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as an adjunct (part-time, temporary, non-tenure track) instructor in the psychology department at UNI since the fall term of 2014. She most recently worked through May 5, 2017, when the spring semester ended. She will be working 75-percent time teaching three sections during the fall term according to psychology department head Adam Butler. Claimant is currently out of the country and expects to return by the end of June. She has never been scheduled to teach in the summer. Her course load depends on student registration and has ranged from 25 to 100 percent time or one to four courses per term. During the spring 2017 term claimant taught four classes. She was expected to teach four classes in the fall term of 2017, but one class was moved to a tenured professor due to a cancellation of one of the professor's classes and budget reductions. No other changes are anticipated. (Claimant's Exhibit A) During the base period quarters her wages with UNI ranged from \$3,828.00. to \$11,484.00. Claimant does not have other regular non-educational institution employment wage credits in the base period. She does have wages with Hawkeye Community College.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does have reasonable assurance of returning to work the following academic term or year and does not have other non-educational institution wages in the base period.

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.

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.

Iowa Admin. Code r. 871-24.51(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.

Where a claimant did not work over the summer for a community college which held a summer session, the Court still denied benefits because of the "summer vacation." *Merged Area VII v. Iowa Dep't of Job Serv.*, 367 N.W.2d 272, 274, 275 (Iowa Ct. App. 1985).

The U.S. DOL issued Program Letter No. 5-17 on December 22, 2016, that sets out guidance for the the department interpretation of the Federal Unemployment Tax Act (FUTA) as it applies to institutions of higher education and part-time, adjunct or contingent faculty. It sets out sets out three factors required for a reasonable assurance determination. First, a genuine offer of employment from a person with authority may be written, oral or implied. Second, the employment offered must be in the same capacity (e.g. professional or non-professional) as held in the previous term. Third, the economic conditions offered may not be “considerably less” than in the prior term. The letter defined “considerably less” as not earning at least 90 percent of the amount earned in the earlier academic year or term. It goes on to examine whether contingencies within the offer are within the employer’s control as a means to determine if the claimant has reasonable assurance of continued employment. *Circumstances such as enrollment, funding and seniority are not considered to be within the employer’s control.* The letter requires analysis of the “totality of circumstances” to determine whether it is “highly probable” that there is a job available for claimant the following academic term. It also requires weight be given to the contingency of the offer and if it is “highly probable” that the contingency will be met. (Emphasis added.) [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=8999](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8999)

In this case, the claimant has a genuine offer of work for the following term and in the same professional capacity as the last term. The removal of one of the four classes does lower income by more than ten percent but the reason was outside the employer’s control due to budgetary reasons and seniority, since the salaried tenured professor had a teaching space to fill and the university reasonably would assign that to the salaried employee with no additional pay for the standard course load, rather than pay additional funds to claimant to teach the same course. Since claimant does not have other non-educational institution wage credits in the base period and does have reasonable assurance of continued employment for the 2017 fall term, she is not considered unemployed.

**DECISION:**

The May 22, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant does have reasonable assurance of returning to work the following academic year or term. Accordingly, benefits are denied.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/scn