

**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**

**ERIN W HALLIGAN
311 8TH AVE N
FORT DODGE IA 50501**

**IOWA CENTRAL COMMUNITY COLLEGE
ATTN SUPERINTENDENT
330 AVE M
FORT DODGE IA 50501**

**Appeal Number: 06A-UI-00944-RT
OC: 01-01-06 R: 01
Claimant: Appellant (4-R)**

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 – Benefits Based on Service for an Educational Institution
Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.7-2-a-2 – Employer Contributions and Reimbursements
(Different Employment – Benefits Charged)
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, Erin W. Halligan, filed a timely appeal from an unemployment insurance decision dated January 23, 2006, reference 01, allowing unemployment insurance benefits to him, but based on earnings with other noneducational employers and not based on earnings from the employer herein, Iowa Central Community College, because records indicate that the claimant is currently laid-off between successive years or terms and the claimant has reasonable assurance that he will be returning to work for the employer which is an educational institution.

After due notice was issued, a telephone hearing was held on February 13, 2006, with the claimant participating. Sandi Pieper, Coordinator of Personnel Services, and Troy Brandt, Director of Physical Facilities, participated in the hearing for the employer, Iowa Central Community College. Employer's Exhibits One through Three were admitted into evidence. 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, including Employer's Exhibits One through Three, the administrative law judge finds: The claimant was and still is employed by the employer as a part-time employee performing ground work for the summer since April 5, 2005. The claimant has not permanently separated from his employment but is only off work because of the seasons and weather. The claimant was hired as summer seasonal help and began working eight hours per day, although the actual hours per day varied to some extent. The claimant was then to be laid-off. The claimant went to his supervisor, Eugene Carlson, Coordinator of Grounds and Transportation, and asked his supervisor if he could have hours through the winter. The supervisor agreed, but the claimant's hours were severely reduced. The claimant's hours were reduced because of a lack of work due to the seasonal nature of the work and not because of any school holiday recess or period between academic years or terms. The claimant fully expects to be returned to his regular hours again in the spring when the weather permits. The hours the claimant worked appear at Employer's Exhibit One. It is clear that in November and December of 2005 and January of 2006 that the claimant's hours were substantially reduced to approximately two hours per day. The employer's school calendar appears at Employer's Exhibit Two, but the claimant's reduction in hours is not related to any school holidays or recesses. The claimant's reduction in hours is also shown in the claimant's paycheck history report shown at Employer's Exhibit Three.

The claimant has placed no physical restrictions or training restrictions on his ability to work. The claimant has placed no time, day, or location restrictions on his availability to work, although his hours have been reduced by the employer. The claimant is available to work his old hours if the employer had such work. This employment is the claimant's regular job.

The employer is an educational institution recognized and certified as such by the Iowa Department of Education. The claimant does not perform any instructional, research, or administrative services for the employer. Pursuant to his claim for unemployment insurance benefits filed effective January 1, 2006, the claimant has received unemployment insurance benefits in the amount of \$81.00 as follows: Zero benefits for benefit week ending January 7, 2006 (earnings \$128.00); zero benefits for benefit week ending January 14, 2006 (earnings \$122.00); \$29.00 for benefit week ending January 21, 2006 (earnings \$67.00); \$36.00 for benefit week ending January 28, 2006 (earnings \$60.00); zero benefits for benefit week ending February 4, 2006 (earnings \$277.00); \$16.00 for benefit week ending February 11, 2006 (earnings \$80.00); and zero benefits for benefit week ending February 18, 2006 (earnings \$580.00).

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is still employed by an educational institution but is off work or his work has been reduced because he is between two successive academic years or terms or holiday recess and he has reasonable assurance that he will be performing the same work in the new academic year or term as he did in the prior academic year or term. The claimant is not ineligible to receive unemployment insurance benefits for this reason because, although the claimant is employed by an academic institution and is off work or has his hours severely reduced temporarily and has reasonable assurance that his hours will be increased in the 2006 term as he had worked earlier in the 2005 term, the claimant is not off work or under a substantial reduction of hours because he is between two successive academic years or terms or on holiday recess but because his work is seasonal and his hours have been substantially reduced because of the seasons.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, he is, and was, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for these reasons.
3. Whether the claimant is in the employment of a base period employer and is receiving the same benefits as he received during his base period and therefore the employer should not be charged for any unemployment insurance benefits to which the claimant is entitled. The claimant is not receiving the same employment as he did previously and the employer should not be relieved of any charges for unemployment insurance benefits to which the claimant is entitled.
4. Whether the claimant is overpaid unemployment insurance benefits. He is not.

Iowa Code section 96.4-5-b, 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:

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.

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.

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 the employer is an educational institution as defined at 871 IAC 24.51 (1). The claimant is not employed in an instructional, research, or administrative capacity. The claimant's hours have been substantially reduced for the winter season. The claimant has reasonable assurance that he will be performing the same work and hours in the latter part of the 2006 school term that he had in the early part of the 2005 school term. However, the administrative law judge is constrained to conclude that the claimant is not off work or under substantially reduced hours because he is between two successive academic years or terms or holiday recess or breaks. The evidence is clear that the claimant is on the reduced hours simply because of the seasonal nature of his work. The claimant's hours began to reduce in November of 2005, as shown at Employer's Exhibit One, and have continued to be reduced through January of 2006 and thereafter, and this bears no relationship to the periods between successive academic years or terms or holidays or recesses, as shown at Employer's Exhibit Two. The administrative law judge is constrained to conclude that the "between terms denial" applicable to those employees of educational institutions who are off work between successive academic years or terms or on holiday recess but have reasonable assurance, and thus are ineligible for benefits, does not apply to the claimant, because the claimant is not off work or under substantially reduced hours because of any academic year or term or recess or holiday. Accordingly, the administrative law judge concludes that the claimant is not ineligible to receive unemployment insurance benefits for this reason. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

The administrative law judge notes that the claimant is now eligible to receive unemployment insurance benefits but is receiving such benefits because of nonschool wage credits the claimant received from other employers in his base period. The claimant's earnings from the employer herein, Iowa Central Community College, may well change the computation and determination of the claimant's weekly benefit amount, since they should be included in the computation of the claimant's unemployment insurance benefits because he is not subject to the "between terms denial" as noted above. The administrative law judge cannot determine whether the claimant's benefits would be increased or changed due to the inclusion of the earnings from the employer herein, so this matter must be remanded to Claim's for an investigation and determination as to what the claimant's weekly benefit amount would be including the earnings from the employer herein, Iowa Central Community College.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W. 2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he is temporarily and partially unemployed as defined by Iowa Code section 96.19 (38) (b) (c), so as to excuse the claimant from the requirements that he available for work and earnestly and actively seeking work. Further, the claimant credibly testified that he has placed no restrictions on the times or days or locations that he can work concerning his availability for work and has further placed no physical restrictions or training restrictions on his ability to work. The administrative law judge therefore concludes that the claimant is available for work and able to work. Accordingly, the administrative law judge concludes that the claimant is able and available for work and, in any event, does not have to be available for work and earnestly and actively seeking work, because he is temporarily and partially unemployed. Therefore, the administrative law judge concludes that the claimant is not ineligible to receive unemployment insurance benefits for these reasons. Unemployment insurance benefits are allowed to the claimant provided he remains partially and temporarily unemployed or remains able, available, and earnestly and actively seeking work and is otherwise entitled to such benefits.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that the employer herein, Iowa Central Community College, is a base period employer and the claimant is still in the employee of that employer but the claimant is not receiving the same employment from the employer that he received during his base period. The claimant's hours have been substantially reduced, as clearly shown at Employer's Exhibit One. Therefore, the administrative law judge concludes that any unemployment insurance benefits to which the claimant is entitled may be charged against the account of the employer herein and the account of the employer herein shall not be relieved of any such charges.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$81.00 since filing for such benefits effective January 1, 2006. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of January 23, 2006, reference 01, is modified. The claimant, Erin W. Halligan, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The earnings from the employer herein, Iowa Central Community College, should be included in the computation and determination of the claimant's unemployment

insurance benefits because although the claimant's hours have been severely reduced it is not because of any period of time between academic years or terms or any recess or holiday but is due only to seasonal work even though the employer is an educational institution and the claimant has reasonable assurance. This matter should be remanded to Claim's for an investigation and determination as to the claimant's weekly benefit amount after including the earnings from the employer herein in such computation and determination. The claimant is able and available for work and is excused from the provisions requiring him to be available and earnestly and actively seeking work. The employer should not be relieved of any charges for benefits to which the claimant is entitled, because the claimant is not receiving the same hours from the employer as he did in his base period. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits which he has received and he may have been underpaid unemployment insurance benefits.

REMAND:

This matter is remanded to Claim's for an investigation and determination of the claimant's weekly benefit amount and his unemployment insurance benefits after, including the earnings from the employer herein, Iowa Central Community College, because the "between terms denial" related to an educational institution when the employee has reasonable assurance does not apply here, because the claimant is not off work or working at substantially reduced hours because he is between academic years or terms or in any vacation period or holiday recess.

kkf/kjw