

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

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IOWA WESLEYAN COLLEGE  
601 N MAIN  
MT PLEASANT IA 52641-1398

Appeal Number: 06A-UI-06966-JTT  
OC: 11/20/05 R: 04  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

Laura Hinesley filed a timely appeal from the June 8, 2006, reference 03, decision that denied benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on July 14, 2006. Ms. Hinesley participated. Human Resources director Bonny Davis represented Iowa Wesleyan College. Exhibits One, Two, A and B were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laura Hinesley commenced her part-time employment as a sign language interpreter at Iowa Wesleyan College in the fall of 2005 and worked to the end of the 2005-2006 academic year, which ended April 28, 2006. Iowa Wesleyan is a private, nonprofit college. Ms. Hinesley was

assigned to assist a particular student and worked at least 13 hours per week. Ms. Hinesley and Iowa Wesleyan have an agreement whereby Ms. Hinesley will return to Iowa Wesleyan for the 2006-2007 academic year and provide interpreting services to the same student. Ms. Hinesley will work at least 17 hours per week. Classes resume August 22, 2006.

Ms. Hinesley's original claim was effective November 20, 2005. Ms. Hinesley established an additional claim for benefits that was effective May 7, 2006. Ms. Hinesley's base period wage credits are based on employment with Area Education Agency Number 16, Southeastern Community College, and the Burlington Community School District.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record indicates that Ms. Hinesley is disqualified for benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). It does.

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

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.

d. For purposes of this subsection, "*educational service agency*" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

[Emphasis added.]

871 IAC 24.51(1) defines "educational institution" as follows:

Educational institution means public, nonprofit, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

871 IAC 24.51(3)(b) defines "nonprofessional employees" as follows:

Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in instructional, research, or principal administrative capacity.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

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.

871 IAC 24.52(4) provides as follows:

Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However,

unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

*b.* The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph “e.”

871 IAC 24.52(6) provides as follows:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

The evidence in the record establishes that Iowa Wesleyan College is an “educational institution” affected by the between academic terms disqualification provision Iowa Code section 96.4(5)(d). The evidence in the record establishes that Ms. Hinesley was a “nonprofessional” employee of Iowa Wesleyan College during the 2005-2006 academic year and has reasonable assurance of employment in a similar capacity during the 2006-2007 academic year. Iowa Workforce Development records indicate that none of Ms. Hinesley’s base period wage credits are “nonschool” wage credits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hinesley is disqualified for benefits between academic terms based on the provisions of Iowa Code section 96.4(5)(b).

#### DECISION:

The Agency representative’s June 8, 2006, reference 03, decision is affirmed. The claimant is disqualified for benefits based on the between academic terms disqualification provisions of Iowa Code section 96.4(5). The claimant is disqualified for benefits effective May 7, 2006.

jt/cs