

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

GARY B STEWARD
802 E COUNTYLINE RD TRLR 89
DES MOINES IA 50320

NORWALK COMMUNITY
SCHOOL DISTRICT
906 SCHOOL AVE
NORWALK IA 50211-1584

Appeal Number: 04A-UI-09511-RT
OC: 05/30/04 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 – Benefits based on service for an educational institution

STATEMENT OF THE CASE:

Two claimant's filed timely appeals from unemployment insurance decisions as follows: Billy D. Mason from a decision dated August 27, 2004, reference 01, denying unemployment insurance benefits to him which, appeal is number 04A-UI-09509-RT and Gary B. Steward from a decision dated August 27, 2004, reference 01, denying unemployment insurance benefits to him, which appeal is number 04A-UI-09511-RT. These two appeals were consolidated for the purposes of the hearing with the consent of both claimants and the employer, and the claimant, Gary B. Steward also agreed to have his hearing held at 1:00 p.m. instead of the regularly scheduled hearing for him at 2:00 p.m. After due notice was issued, a telephone hearing was held on September 28, 2004, for both appeals, with both claimants participating. Kate Baldwin, Business Manager, participated in the hearing for the employer, Norwalk Community School District, who was the witness in both appeals. These two appeals were also consolidated with appeal numbers 04A-UI-09510-RT and 04A-UI-09512-RT, both dealing with overpayment of

unemployment insurance benefits, also for the purposes of the hearing and with the consent of the parties. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for both claimants. Employer's Exhibits One and Two were admitted into evidence.

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 and Two, the administrative law judge finds: Claimant Billy D. Mason, was and is still employed by the employer as a full-time bus driver since February 1999 and has not separated from his employment. Claimant Gary B. Steward, was and still is employed by the employer as a full-time bus driver since August 1999 and also has not separated from his employment. The two claimants are considered full-time employees of the employer, Norwalk Community School District, although they do not work full-time hours. Both claimants performed services as a bus driver for the employer in the 2003-2004 school year, which ended on May 28, 2004. Both expected to and are performing services as a school bus driver in the new school year 2004-2005. There have been no major changes to the work of either of the claimants. Both claimants are under a collective bargaining agreement with the employer and at no time did either claimant have any reason to believe that they would not be performing bus driver services in 2004-2005 as they had previously. Neither claimant received any notice of termination. Both claimants fully expected to be performing services as bus drivers in 2004-2005 and they are. Although a collective bargaining contract was due on or about June 1, 2004, it was not sent until June 25, 2004 as shown at Employer's Exhibits One and Two. Both claimants were mailed collective bargaining contracts on June 25, 2004 as shown at Employer's Exhibits One and Two and both received the collective bargaining contracts on June 27, 2004. No union negotiations were going on during this period of time and both claimants, at all material times hereto, fully expected to be performing services for the employer in the 2004-2005 school year. Neither claimant has earnings in their base periods from any employer other than the employer herein. The employer herein is an educational institution.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether both claimants were still employed by an educational institution between two successive academic years or terms and had reasonable assurance and therefore would be ineligible to receive unemployment insurance benefits between the two successive academic years or terms. Both claimants were employed by educational institutions between two successive academic years or terms and both had reasonable assurance and therefore both are ineligible to receive unemployment insurance benefits between the two successive academic years or terms.

Iowa Code Section 96.4-5-b 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.

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 there is a preponderance of the evidence that both claimants, Billy D. Mason and Gary B. Steward, were employed by an educational institution performing services as a bus driver and not instructional services and both claimant's performed services as a bus driver in the first academic year or term, 2003-2004 and both had reasonable assurance that they would be performing similar services for the employer for the second academic year or term, 2004-2005. When the 2003-2004 school year ended on May 28, 2004, both claimants had an implied agreement that they would be performing services in the same or similar capacity as a bus driver for the ensuing school year, 2004-2005. Both claimants and the employer's witness, Kate Baldwin, Business Manager, testified that the school district did nothing to indicate to either claimant that they would not be performing services in a similar capacity in the ensuing or new academic year or term and were so informed of this. Both claimants are subject to a collective bargaining agreement with the employer and neither claimant received any notice of termination of their employment under the terms of the collective bargaining agreement. There was a delay in the actual contract. The contracts offered to the claimant were dated June 25, 2004 and sent to the claimants on that date and received by the claimants on June 27, 2004. Clearly, the claimants had reasonable assurance upon receipt of the collective bargaining agreements, which appear at Employer's Exhibit One and Two. The administrative law judge also concludes that the claimant's had reasonable assurance prior to that time and, in fact, when the prior academic year or term, 2003-2004, ended on May 28, 2004. The administrative law judge does not believe that a delay in the contract was a delay for, or a failure of, reasonable assurance. Accordingly, the administrative law judge concludes that both claimants are ineligible to receive unemployment insurance benefits for the period between the two academic years or terms. The administrative law judge notes that both claimants are now performing similar services for the employer. The administrative law judge further notes that neither claimant has earnings from any other employer but the employer herein and therefore are not entitled to unemployment insurance

benefits based on non-school related wage credits pursuant to 871 IAC 24.52(6). Unemployment insurance benefits are denied to both claimants during the period between the two successive years or terms from May 28, 2004 through August 19, 2004.

DECISION:

The representative's decision dated August 27, 2004, reference 01, is affirmed. The claimant, Gary B. Steward, is not entitled to receive unemployment insurance benefits from May 28, 2004 through August 19, 2004, because he was still employed by an educational institution between two successive academic years or terms and had reasonable assurance that he would perform services in the ensuing or new academic year or term.

kjf/b