

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TRACY A STREETS**  
Claimant

**APPEAL NO. 13A-UI-01066-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PLEASANT VALLEY COMMUNITY  
SCHOOL DISTRICT**  
Employer

**OC: 12/23/12**  
**Claimant: Appellant (1)**

Section 96.4(5)c – Reasonable Assurance

**STATEMENT OF THE CASE:**

The claimant, Tracy Streets, filed an appeal from a decision dated January 24, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 28, 2013. The claimant participated on her own behalf. The employer, Pleasant Valley Community School District (Pleasant Valley), did not provide a telephone number where a witness could be contacted and did not participate.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Tracy Streets began employment with Pleasant Valley September 8, 2011, as a part-time lunch room supervisor. She filed a claim for unemployment benefits with an effective date of December 23, 2012, during the winter school break. She was to continue in her same employment for the spring term.

The record was closed at 8:12 a.m. After the record was closed the employer called and requested to participate. The employer received the hearing notice prior to the February 28, 2013 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the employer directly contacted the Appeals Section was on February 28, 2013, after the scheduled start time for the hearing. The employer had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice.

## REASONING AND CONCLUSIONS OF LAW:

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.

The claimant filed for benefits between successive academic terms. Under the provisions of the above Code section, she is ineligible for benefits as she had reasonable assurance of continued employment in the next academic term.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The first time the employer called the Appeals Section for the February 28, 2013 hearing was after the hearing had been closed. Although the employer may have intended to participate in the hearing, the employer failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to

reopen the hearing. The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

**DECISION:**

The representative's decision of January 24, 2013, reference 01, is affirmed. Tracy Streets is ineligible for unemployment benefits.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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