

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

CARI OWENS  
1516 – 7<sup>TH</sup> AVE  
DEWITT IA 52742

IOWA EAST CENTRAL T R A I N  
500 E 59<sup>TH</sup> ST  
DAVENPORT IA 52807-2623

Appeal Number: 05A-UI-06877-BT  
OC: 06/05/05 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, 4<sup>th</sup> 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 – Reasonable Assurance

STATEMENT OF THE CASE:

Cari Owens (claimant) appealed an unemployment insurance decision dated June 24, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was on a customary vacation or holiday recess with Iowa East Central T.R.A.I.N (employer), an educational institution. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2005. The claimant participated in the hearing. The employer participated through Pam Damhorst, Human Resources Benefits Administrator.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time head start teacher on January 21, 2003. She has not separated from her full-time employer and is still employed at the same hours and wages as anticipated at the time of hire. The claimant is on her summer vacation between successive academic terms and has a reasonable assurance of continued employment in the fall.

#### REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits and for the following reasons, the administrative law judge concludes it does not.

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.

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.

871 IAC 24.52(7) provides:

(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

The claimant is employed with head start, which is considered an educational institution. The head start program meets the definition of an educational institution and if employees have a reasonable assurance of continued employment in the successive academic term, benefits must be denied. Simpson v. Iowa Department of Job Service, 327 N.W.2d 775 (Iowa App. 1982). The claimant is off work for the customary summer vacation and has a reasonable assurance of reemployment in the same capacity for the successive term. Benefits are therefore denied.

#### DECISION:

The unemployment insurance decision dated June 24, 2005, reference 01, is affirmed. The claimant is still employed with an educational institution and is not eligible for benefits.

sdb/kjw