

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARA L LARSON

Claimant

APPEAL NO. 11A-UI-10301-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STRATFORD COMMUNITY SCHOOL DIST

Employer

OC: 06/26/11

Claimant: Appellant (4)

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

Tara Larson filed a timely appeal from the August 1, 2011, reference 05, decision that denied benefits *effective June 26, 2011*, pursuant to the between academic terms disqualification set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on August 25, 2011. Ms. Larson participated. Linda Swedlund, Secretary and Business Manager represented the employer. The administrative law judge took official notice of the Agency's administrative record of wages reported by or for the claimant and benefits disbursed to her.

ISSUE:

Whether the claimant is disqualified for unemployment insurance benefits based on wages earned through this employment pursuant to the between academic terms disqualification set forth at Iowa Code section 96.4(5).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tara Larson worked as a substitute teacher for the Stratford Community School District approximately 25 times during the 2010-2011 academic year. The 2010-2011 academic year ended for this school district on May 26, 2011. Ms. Larson continued on the district's substitute teacher roster for the duration of the academic year. Ms. Larson understood at all relevant times that she would continue on the roster of substitute teachers during the 2011-2012 academic year that started August 23, 2011, unless she contacted the district to request removal from the substitute teacher roster.

Ms. Larson had an active claim for unemployment insurance benefits at the time she performed work for this employer. That claim had been effective June 27, 2010. That claim continued to be active in May 2011, when the school district's academic year came to an end. Ms. Larson established a new claim for unemployment insurance benefits that was effective June 26, 2011 after the earlier claim year expired.

Ms. Larson's husband works for this school district. Though Ms. Larson did not go through the proper channel to notify the employer that she would not be returning, the employer learned

through Ms. Larson's husband that she had obtained a new full-time teaching position and would not be returning as a sub for the 2011-2012 academic year.

REASONING AND CONCLUSIONS OF LAW:

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.

The evidence in the record establishes that the employer 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. Larson was a professional employee of Stratford Community School District during the 2010-2011 academic year and had reasonable assurance of employment in a similar capacity during the 2011-2012 academic year.

While Ms. Larson is eligible for benefits based on *other* employment, provided she meets all other eligibility requirements, Ms. Larson is not eligible for benefits based on wages earned from *this employer* pursuant to the between academic terms disqualification set forth at Iowa Code section 96.4(5). This employer will not be charged for benefits paid to Ms. Larson.

DECISION:

The claims representative’s August 1, 2011, reference 05, decision is modified as follows. The claimant remains eligible for benefits based on *other* employment, provided she meets all other eligibility requirements. The claimant is not eligible for benefits based on wages earned from *this employer* pursuant to the between academic terms disqualification set forth at Iowa Code section 96.4(5). This employer’s account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css