

**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**

**TASHA C THAMES
2772 E 53RD ST #6
DAVENPORT IA 52807**

**DAVENPORT COMMUNITY SCHOOL
DISTRICT
ATTN SUSAN K HERZMANN
1601 BRADY ST
DAVENPORT IA 52803**

**Appeal Number: 05A-UI-06955-RT
OC: 05-29-05 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-5 – Benefits Based on Service for an Educational Institution

STATEMENT OF THE CASE:

The claimant, Tasha C. Thames, filed a timely appeal from an unemployment insurance decision dated June 24, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on July 25, 2005, with the claimant participating. Linda McClurg, Director of Human Resources, participated in the hearing for the employer, Davenport Community School District. Rita Watts, Coordinator of Foreign Languages and Social Studies, and former Director of Human Resources, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. Department Exhibits One through Three and Claimant's Exhibit A were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibits One through Three and Claimant's Exhibit A the administrative law judge finds: The claimant was and still is employed by the employer as a full-time community site facilitator since August 27, 2001. The claimant is presently not working for the employer during the summer between academic years or terms. In the 2003-2004 school year, the claimant worked 235 days, including much of the summer. In the 2004-2005 school year, the claimant worked at least 235 days but worked more days during the school year and, therefore, did not work during the summer. Additional work was available for the claimant over the summer of 2005 but she chose not to interview for it because it would have paid her less. The employer had promised the claimant no additional work other than the 235 days that the claimant worked each school year. The employer is a community school district certified and licensed as such by the Iowa Department of Education. As a community site facilitator, the claimant is charged with the supervision of the employer's after school program, including working with instructors to enrich the activities of students and tutor students and monitor the student's achievement. On May 31, 2005, the claimant was sent a letter as shown at Department Exhibit One, which she received by e-mail indicating that the employer looked forward to working with the claimant in the position of community site facilitator for the 2005-2006 school year. It further indicates that the claimant chose not to work during the summer months. In the claimant's base period, records show no earnings from any other employer other than the employer herein.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is still employed by an educational institution between two successive academic years or terms and has reasonable assurance of continued employment and, therefore, would be ineligible to receive unemployment insurance benefits between the two academic years or terms. The administrative law judge concludes that the claimant is employed by an educational institution between two successive academic years or terms and has reasonable assurance of being employed in the ensuing new school year, 2005-2006, as she was employed in the prior school year, 2004-2005 and, therefore, she is ineligible to receive unemployment insurance benefits.

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.

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 the claimant is employed by an educational institution performing instructional services. The employer is a community school district licensed and certified as such by the Iowa State Department of Education. It is clearly an educational institution. See 871 IAC 24.51(1). Further, the claimant is employed as a community site facilitator working with instructors to provide enrichment activities for students as well as tutoring activities. She also monitors achievement. The administrative law judge concludes that this is an instructional position. Even if it was not an instructional position, the between terms or years denial would still apply to the claimant. The administrative law judge further concludes that there is a preponderance of the evidence that the claimant performed services for the employer as a community site facilitator for the 2004-2005 school year. The administrative law judge finally concludes that the claimant has reasonable assurance that she will be providing the same services in the ensuing or new school year, 2005-2006. Department Exhibit One clearly indicates to the claimant that she will be working in the position of community site facilitator for the 2005-2006 school year, at least if she wishes to do so. The claimant testified that she wishes to still work in that position and plans to do so. Accordingly, the administrative law judge concludes that the claimant has reasonable assurance that she will perform the same or similar services for the employer in the 2005-2006 school year that she did in the 2004-2005 school year. Therefore, the administrative law judge concludes that the claimant is employed with an educational institution between two successive academic years or terms and has reasonable assurance and is, therefore, ineligible to receive unemployment insurance benefits.

The claimant seems to argue first that she does not have reasonable assurance. The claimant argues that Department Exhibit One is not a contract. Reasonable assurance need not be a formal written contract. It is sufficient if the claimant has a written, verbal, or implied agreement that the claimant will perform services in the same or similar capacity in the ensuing school year as the claimant did in the prior school year. The administrative law judge concludes that the claimant does have such an implied agreement. Department Exhibit One is clear to that extent. The employer's witness, Linda McClurg, Director of Human Resources, further credibly testified that the claimant will be employed in the 2005-2006 school year as a community site facilitator, at least if she still wants the position. The claimant seems to argue that she does not have reasonable assurance because of some kind of funding matter as shown in Department Exhibits Two and Three, but the administrative law judge disagrees and concludes that the claimant does have reasonable assurance. The claimant also seems to argue that she is entitled to unemployment insurance benefits because in prior years she worked over the summer. The administrative law judge does not believe that this is an argument to receive unemployment insurance benefits. Iowa Code section 96.4(5) is silent as to whether employees in the past who work summers are entitled to benefits. The statute is clear that if one is unemployed and not working between two successive academic years or terms for an educational institution but has reasonable assurance that the individual will perform services in a similar capacity as the individual had in the prior academic year, the individual is not entitled to unemployment insurance benefits. As noted above, this provision directly applies to the claimant. Further, the administrative law judge notes that the evidence establishes that in 2003-2004 the claimant worked and was paid for 235 days that included some work in the summer. The evidence also establishes that in 2004-2005 the claimant also worked and was paid for 235 days but this occurred sooner and the claimant was not then working in the summer. The administrative law judge concludes that the claimant was provided all of the employment promised by the employer in both school years. The administrative law judge further notes that the claimant could have applied for additional work in the summer of 2005 but chose not to do so. The claimant testified that she did not do so because there was some kind of a change in pay. Even assuming that there was a change in pay, the administrative law judge concludes that the employer had paid the claimant all that it had promised to pay the claimant and the claimant voluntarily chose not to work in the summer, having already been provided all work due her and having already received all monies due her by the employer.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant is still employed by an education institution but is not presently working because she is between two successive academic years or terms and she has reasonable assurance of performing the same services in the new academic year or term, 2005-2006, that she performed in the prior academic year, 2004-2005, and therefore she is ineligible to receive unemployment insurance benefits. Accordingly, unemployment insurance benefits are denied to the claimant until or unless she demonstrates that she is otherwise entitled to such benefits. The administrative law judge specifically notes that the claimant has no other earnings in her base period from other employers other than the employer herein and therefore is not otherwise monetarily eligible to receive unemployment insurance benefits based on wages from a non-educational institution. See 871 IAC 24.56(6).

DECISION:

The representative's decision of June 24, 2005, reference 01, is affirmed. The claimant, Tasha C. Thames, is not entitled to receive unemployment insurance benefits, until or unless she demonstrates that she is otherwise entitled to such benefits, because she is employed by an educational institution but is off work between two academic years or terms and has

reasonable assurance that she will perform the same or similar services in the new academic year or term, 2005-2006, that she performed in the prior academic year or term, 2004-2005.

pjs/kjw