

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

TAMMY R CRITTEN
1609 CALVIN ST
DAVENPORT IA 52804

IOWA EAST CENTRAL T R A I N
500 E 59TH ST
DAVENPORT IA 52807 2623

Appeal Number: 05A-UI-07017-H2T
OC: 06-05-05 R: 04
Claimant: Appellant (2)

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-b – Benefits During Successive Academic Terms

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 24, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 26, 2005. The claimant did participate. The employer did participate through Pam damHorst, Benefits Administrator. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant was hired in September 1998 as a teaching assistant in a head start program run by the employer. The claimant is currently laid off as the head start program is discontinued during the summers between academic years. The claimant plans to return in the fall when the

school year begins again, and the employer also plans on her return for the next school year. The employer's own literature provides that Iowa East Central T.R.A.I.N. is a private non-profit corporation established in 1966 and is the designated Community Action Agency for Scott, Clinton, Cedar and Muscatine Counties. The employer runs many programs including a winter weatherization program, a program to aid the elderly in obtaining prescription medication, a fan/air conditioner project, a food pantry, a volunteer income tax assistance project and a head start program. The head start program is only one component of the many programs run by the Community Action Program employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is between successive terms with an educational institution and therefore not entitled to receive unemployment insurance benefits. For the following reasons the administrative law judge concludes the claimant is entitled to unemployment insurance benefits as the between the terms denial does not apply to this employer.

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 24.52(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 employer's reliance on the case of Simpson v IDJS, 327 N.W.2d 775 (Iowa App. 1982) is not well founded. In Simpson, the court of appeals held that any head start program was an educational institution and thus the between terms denial would apply. The Simpson decision was made in 1982 and made no reference to any rules of the Iowa Administrative Code. Rules 871 IAC 24.52(7)(a) and (b) were promulgated in April 1988 with an effective date of May 25, 1988. The rules were written and enacted after the court of appeals decision in Simpson. It is axiomatic that when interpreting statutes or rules, it is assumed that the legislating body was aware of all case law at the time the new rule or law was enacted. A plain reading of the rule makes clear that the Court of Appeals holding with regard to head start programs was changed by the newly enacted rules of 1988. Since the enactment of the rules, head start programs which are operated by a community action program are not considered educational employers and the between terms of denial does not apply.

The primary question to be ascertained is whether the employer is a community action program. Iowa East Central Train is a community action employer. Thus, it does not matter how much of their resources they devote to head start programs, the only question is whether the head start program is one component of the programs they offer. Here it is clear that the employer is a community action program who offers head start as one component of the multitude of programs offered. Because the employer is a community action program, the between terms of denial does not apply nor does the Simpson case require the between terms of denial exclusion apply.

The claimant is not employed by an educational institutional. She is employed by a community action program which has as one of its components a head start program. Since the Administrative Code section set out above clearly provides that community action programs which have a head start school as one component are not educational institution employers the between terms denial does not apply. The claimant is entitled to receive benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 24, 2005, reference 04, decision is reversed. The claimant is exempted from the between academic terms denial and benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjw