

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JO NOWAK THOMPSON
Claimant

APPEAL NO: 10A-UI-10912-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOUNT VERNON COMM SCHOOL DIST
Employer

OC: 06-06-10
Claimant: Respondent (2-R)

871 IAC 24.1(113)a – Separation Due to Layoff
Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 29, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 22, 2010. The claimant participated in the hearing with Attorney Jay Hammond. Matt Burke, School Board Secretary/Treasurer and Dr. Pamela Ewell, Superintendent, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether claimant had a reasonable assurance of continued employment during the next school year or term.

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 employed as a part-time early childhood teacher for the Mount Vernon Community School District during the 2009-2010 school year. She had the option of being paid for nine months or 12 months and elected to be paid 12 months. The claimant's contract paid her from September 21, 2009 through August 20, 2010. The employer notified the claimant by mail April 23, 2010, that her contract would not be renewed and would end at the expiration of the 2009-2010 school year due to a reduction of force required by budgetary constraints. Teacher contracts are often offered throughout the summer or late fall and the employer received more revenue from the State than first expected and consequently it created a new contract for the claimant June 15, 2010, and sent the claimant an e-mail June 19, 2010, stating the contract was available to be signed for the 2010-2011 school year. The claimant was unavailable so did not send a return e-mail until June 29, 2010. She signed the contract July 6, 2010, and the school board received the signed contract in a meeting on July 6, 2010.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes there was no separation of employment. All terminations of employment are generally classified as layoffs, quits, discharges or other separations. 871 IAC 24.1(113)(a). A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer has discharged the claimant for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. In this case, the claimant was paid for the 2009-2010 school year through August 20, 2010. She was notified her contract was not going to be renewed April 23, 2010, due to a reduction of force. However, budget circumstances changed and the employer offered her a contract which she signed July 6, 2010. Consequently, there was no separation of employment and the claimant does not qualify for unemployment insurance benefits.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 29, 2010, reference 01, is reversed. There has been no separation from employment and benefits are denied. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs