

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANA C HAMMEL**  
Claimant

**APPEAL NO. 11O-UI-15830-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**OC: 05/29/11  
Claimant: Appellant (1)**

Section 96.4-5-a – Benefits During Successive Academic Terms

**STATEMENT OF THE CASE:**

Diana C. Hammel (claimant) appealed a representative's July 20, 2011 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits between school years because she was a school employee with the Des Moines Independent Community School District (employer) and had reasonable assurance of employment in the next school year. There had been a prior hearing on August 18, 2011, and a decision on this appeal had been issued under 11A-UI-09882-DT, but after appeal to the Employment Appeal Board, this matter was remanded to the Appeals Section for a new hearing because the recording of the August 18 hearing was flawed. After hearing notices were mailed to the parties' last-known addresses of record, a new telephone hearing was held on January 24, 2012. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing. However, the administrative law judge attempted to call the claimant for the hearing by calling the number the claimant provided for the August 18, 2011 hearing at the time for the hearing on January 24, 2012, however was not available; therefore, the claimant did not participate in the hearing. Cathy McKay participated on behalf of the employer. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant eligible for benefits between successive terms with an educational institution based on wages from that institution?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 11, 2009, working as an on-call substitute teacher. The claimant had a claim year effective March 21, 2010, under which she had received unemployment insurance benefits, including during the period between academic terms, because she had sufficient wages with other employers to sustain a claim. Her last day of work with the employer in the 2010 – 2011 academic year was May 27, 2011. She established a subsequent claim for unemployment insurance benefits for benefits with an effective date of May 29, 2011. She understood that she would remain on the substitute teacher list over the summer break and was reasonably assured of employment as a substitute

teacher afterward on the same basis. She in fact did return to work with the employer after the summer break, starting on or about August 25, 2011, and is working during the 2011 – 2012 academic year.

The claimant's base period for her May 29, 2011 claim year is the first quarter 2010 through the fourth quarter 2010. Her primary base period wage credits are from the employer. She does have some other base period wage credits from another educational institution, the West Des Moines Community School District. She also has some other base period wage credits from non-educational institutions, but those wage credits are only \$636.00 in the first quarter 2010 (from employer Health & Fitness Management), and \$747.00 in the second quarter 2010 (from employers Health & Fitness Management (\$88.00), First Resources Corporation (\$212.00), Marsden Building Maintenance (\$4.00), and Custom Staffing, Inc. (\$443.00)).

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa law provides that a claimant who has wage credits earned through service in an instructional, research, or principal administrative capacity in an educational institution is only eligible for benefits based on those wage credits during the period between two successive academic years if the claimant does not have a contract or "reasonable assurance" that the claimant will perform services in any such capacity for any educational institution for both such academic years or both such terms. Code § 96.4-5-a. "Reasonable assurance" is any written, verbal, or implied agreement that the claimant can expect to perform services for the employer in the same or similar capacity in the next year or term which is not substantially less in economic terms and conditions than the service performed during the prior academic year or term, where that understanding has been communicated to the claimant. 871 IAC 24.51(6).

871 IAC 24.52(10)a provides:

- a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

The employer is an "educational institution." 871 IAC 24.51(1). The claimant worked for the employer during the 2010 – 2011 academic year and returned to work for the employer during the 2011 – 2012 academic year. The two academic years are successive terms. Therefore, the claimant is between successive terms with an educational institution, and she would not be eligible to receive unemployment insurance benefits based upon her wage credits with the employer or any other educational institution.

After the educational institution wage credits are removed from consideration, the claimant does not have sufficient wage credits from non-educational institutions upon which benefits can be paid.

Iowa Code § 96.4-4-a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

- a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were

highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

(Emphasis added.) "Three and five-tenths percent of the statewide average annual wage for insured work for the claimant's base period was \$1,290.00. She would have had to have also earned at least \$645.00 in her next high quarter. The claimant's non-educational institution wages in her high quarter of her base period were only \$747.00, and in her second high quarter were only \$636.00. The claimant has insufficient non-educational institution wage credits in her base period to support the payment of benefits during the period between the academic years.

**DECISION:**

The representative's July 20, 2011 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the period between the 2010 – 2011 and the 2011 – 2012 terms with the employer.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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