

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOPE M DIGHTON
Claimant

APPEAL NO. 13A-UI-07588-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CEDAR RAPIDS COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 02/10/13
Claimant: Appellant (1)

Section 96.4-5-b – School Employee between Academic Terms
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 21, 2013, reference 03, that she was eligible for benefits because although she was a school employee between academic years with reasonable assurance of employment in the next school year, she had enough noneducational wages to qualify for benefits. A telephone hearing was held on July 31, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Anthony Spurgetis participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant worked full time for REM Iowa, from September 12, 2011, to December 9, 2012, when she quit her employment. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Is the claimant subject to the unemployment insurance law's "between terms" provision that denies benefits to certain educational employees between school terms?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for REM Iowa from September 12, 2011, to December 9, 2012. She began working for the employer as a part-time bus attendant on October 12, 2012, and continued working in the part-time job after quitting her full-time job with REM Iowa.

The claimant filed a new claim for unemployment insurance benefits effective February 10, 2013. Her weekly benefit amount was \$229. The employer was not a base-period employer on the claim. Iowa Workforce Development concluded she was not disqualified based on her separation from REM Iowa because she had quit employment to accept employment with the employer.

IWD also decided on March 7, 2013, that the claimant was not eligible for partial unemployment insurance benefits because she was still employed at the same hours and wage as her original contract of hire. That decision stated that if circumstances changed and she believed the disqualification should be removed, she should contact IWD and request that it be removed.

The employer is a school district in Cedar Rapids, Iowa. The claimant is employed part time about 12.5 hours per week at a rate of pay of \$12.23 per hour. She works during the school year and is off work over the summer months when school is not in session.

After school dismissed on June 3, 2013, the claimant applied for unemployment insurance benefits. Her base-period wages are based solely on her full-time wages with REM Iowa. At the point the claimant applied for benefits, she had a reasonable assurance of working in the same job for the employer for the 2013-14 school year.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is subject to the unemployment insurance law's "between terms" provision that denies benefits to certain educational employees between school terms.

Iowa Code Section 96.4-5-b provides that benefits based on services performed in a noneducational capacity for an educational institution shall not be paid between two academic years or terms if a school employee has a contact or reasonable assurance of employment in the same capacity for both such academic years or terms.

In this case, the claimant is an employee of an educational institution. But her unemployment insurance benefits are based exclusively on her wages from REM Iowa. Since her benefits are not based on school wages, she is not subject to the "between terms" disqualification, which is actually what the decision in this case states.

The real reason why the claimant remains ineligible is the decision issued on March 7, 2013, which concluded the claimant was not eligible for partial unemployment insurance benefits because she was still working at the same hours and wages as her contract of hire. Of course, the claimant is no longer working at all because there is no work over the summer months so circumstances have changed.

The bottom line issue in this case is that a claimant who earns her wages in full-time employment must remain available for and actively seeking full-time employment. See 871 IAC 24.22(2)f (a claimant must be available for the same number of hours as when her wage credits were earned). If the claimant contacts her local Workforce Center and establishes she is available for and actively seeking full-time employment, the availability disqualification should be lifted.

DECISION:

The unemployment insurance decision dated June 21, 2013, reference 03, is affirmed. The claimant is not subject to the "between-terms" disqualification because her claim is not based on school wages. She remains subject to the disqualification for being unavailable for work. If the claimant contacts her local Workforce Center and establishes she is available for and actively seeking full-time employment, the availability disqualification should be lifted.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs