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

STEPHANY L HALL
Claimant

APPEAL NO. 07A-UI-06621-HT

ADMINISTRATIVE LAW JUDGE
DECISION

DES MOINES INDEPENDENT
 COMMUNITY SCHOOL DISTRICT
Employer

OC: 06/03/07   R: 02
Claimant: Respondent (2)

Section 9.4(5)b – Reasonable Assurance
Section 96.4(3) – Able and Available
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Des Moines Independent Community School District, filed an appeal from a decision dated June 26, 2007, reference 01. The decision allowed benefits to the claimant, Stephany Hall. After due notice was issued a hearing was held by telephone conference call on July 23, 2007. The claimant participated on her own behalf and with witnesses Julia Walton and Pat Woods. The employer participated by Risk Manager Cathy McKay. Exhibits A, B, and C were admitted into the record.

ISSUE:

The issue is whether the claimant has reasonable assurance of continuing employment in a subsequent academic year.

FINDINGS OF FACT:

Stephany Hall was employed by Des Moines Independent Community School District beginning September 13, 1993 and is currently still employed as a full-time bus associate during the regular academic school year. Bus associates have the option of working during the summer school session, but it is not required. Her last day of work for the 2006-2007 academic year was June 5, 2007.

The claimant filed a claim for unemployment benefits with an effective date of June 3, 2007, indicating she was laid off for lack of work. She was not, but filed because she was not scheduled for the same number of hours as she had in other summers when she worked. She has assurance of employment for the 2007-2008 school year but there was no guarantee of a minimum number of hours for the summer session, as it depends on the number of students being bussed for summer classes.

Stephany Hall has received unemployment benefits since filing a claim with an effective date of June 3, 2007.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-5-b 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:
>
> 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.

Iowa Code section 96.4-3 provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has reasonable assurance of continued employment for the next academic school year and is therefore not eligible for unemployment benefits. In addition, she is not able and available, because she is working the number of hours for the summer session as scheduled.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 26, 2007, reference 01, is reversed. The claimant is not eligible for benefits, as she is not able and available and has reasonable assurance of employment in the next academic year. She is overpaid in the amount of $848.00.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw