

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PENNY S CARLSON**

Claimant

**SOUTHEAST POLK COMMUNITY SCH DIST**

Employer

**APPEAL NO: 14A-UI-00945-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/13**

**Claimant: Respondent (2)**

Section 96.4-5-c – Reasonable Assurance/Educational Institution

Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated January 22, 2014, reference 01, that held the claimant was temporarily laid-off on December 22, 2013, and benefits are allowed. A telephone hearing was held on March 10, 2014. The claimant participated. Margi Belger, HR Executive Director, participated for the employer.

**ISSUE:**

The issue is whether claimant has reasonable assurance of continuing employment for an educational institution during a customary vacation period.

**FINDINGS OF FACT:**

The administrative law judge having heard witness testimony and having considered the evidence in the record finds: The claimant worked as a part-time cook on a 180-day contract. She worked on December 20, 2013 and was off work during the employer holiday vacation period from December 20, 2013 to her return to work on January 6, 2014. The union contract provides for no holiday pay during this period.

Claimant had reported a worker's compensation injury for November 14, 2013 but she continued to work to December 20. She returned from the holiday break period on January 6 and worked to January 8.

Claimant filed an unemployment claim effective December 22. She claimed for and received a \$222.00 benefit for the week ending December 28.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.4-5-c 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:

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

The administrative law judge concludes claimant is not eligible for benefits effective December 20, 2013 as she has reasonable assurance of continuing employment from before to after the employer holiday vacation period.

Claimant worked up to the holiday vacation and immediately after that makes her ineligible for benefits from the employer school district. The worker's compensation issue is not affected by this disqualification period.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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 administrative law judge further concludes claimant is overpaid benefits \$22.00 for the week ending December 28, 2013 due to the disqualification imposed in this matter. Since she is ineligible for benefits she has incurred an overpayment.

**DECISION:**

The department decision dated January 22, 2014, reference 01, is reversed. The claimant was not eligible for benefits on December 20, 2013 due to reasonable assurance. Claimant is overpaid benefits \$222.00.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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