

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARLANA J TEWES**  
Claimant

**APPEAL NO. 11A-UI-09180-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLAY CENTRAL/EVERLY COMMUNITY  
SCHOOL DISTRICT**  
Employer

**OC: 05/29/11**  
**Claimant: Respondent (2R)**

Section 96.4-5 – Reasonable Assurance

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from an unemployment insurance decision dated June 29, 2011, reference 03, that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held August 8, 2011 with the claimant participating. Superintendent Robert Raymer participated for the employer. The administrative law judge takes official notice of Agency benefit payment records.

**ISSUE:**

Does the claimant have reasonable assurance of continued employment by an academic institution?

**FINDINGS OF FACT:**

Marlana J. Tewes was employed full time as a high school counselor by Clay Central/Everly Community School District during the 2010-2011 school year. During the last week of June 2011 Ms. Tewes received a contract from the Graettinger-Terril Community School District for full-time employment teaching Spanish and working with at risk students. Her salary is comparable to her prior salary, but health insurance premiums will be higher. The claimant has received unemployment insurance benefits since filing a claim effective May 29, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.4-5-a 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:

a. Benefits based on service in an instructional, research, or principal administrative capacity in 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 during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

871 IAC 24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

The evidence here persuades the administrative law judge that the claimant's wages for the upcoming school year are "not substantially less" than her wages in the prior benefit year. Under these circumstances, the administrative law judge concludes that benefits must be withheld effective June 26, 2011.

Iowa Code section 96.3-7, as amended in 2008, provides:

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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant has received benefits that must be repaid is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated June 29, 2011, reference 03, is reversed. The claimant has reasonable assurance of continued employment by an academic institution effective June 26, 2011. Benefits are withheld as of that date. The question of repayment of benefits is remanded.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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