

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NAJAM UDDIN
Claimant

APPEAL NO. 12A-UI-07862-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY COMMUNITY SCHOOL DIST
Employer

OC: 05/27/12
Claimant: Appellant (2)

Section 96.4-5-b – School Employee Between Academic Terms

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 28, 2012, reference 01, that concluded the claimant was ineligible for benefits because she was a school employee between academic years and had reasonable assurance of employment in the next school year. A telephone hearing was held on July 25, 2012. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Chase Ramey participated in the hearing on behalf of the employer.

ISSUES:

Has the claimant shown good cause to reopen the hearing?
Is the claimant ineligible for benefits between school terms because he has reasonable assurance of employment in the 2012-13 school year?

FINDINGS OF FACT:

The employer is an educational institution in Iowa City, Iowa. The claimant has worked for the employer since November 2008. He has been employed part time during the school year and has been off work over the summer months when school is not in session. He has worked as a substitute teacher and a para-educator in the employer's preschool program.

During the 2011-12 school year, the claimant worked almost exclusively as a para-educator and rarely as a substitute teacher. He worked until the end of the school year on May 27, 2012. He will not be working as a para-educator for the 2012-13 school year because the grant that funded his position will not be available for the next school year.

The claimant remains on the substitute teaching list for the 2012-13 school year and will perform some work available in that capacity. The employer did not have information about the times the claimant substituted or the amount of wages he earned as a substitute teacher during his base year of 2011.

The claimant called the Appeals Bureau on July 27, 2012, and asserted that he thought the hearing was that day.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the hearing should be reopened. The unemployment rules provide that a hearing can be reopened if a party shows good cause for his failure to participate in the hearing. 871 IAC 26.8(5). No good cause to reopen the hearing has been shown in this case.

The next 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 § 96.4-5 provides that a person employed by an educational institution in an instructional, administrative, or other capacity during one academic year or term who has a contract or reasonable assurance of employment in the same capacity in the next academic year or term is not eligible for benefits based on such employment during the time between academic years or terms.

The unemployment insurance rules define reasonable assurance as 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. 871 IAC 24.51(6).

In this case, the claimant worked almost exclusively as a para-educator in the 2011-12 school year. He will not be working in that capacity in the 2012-13 school year. Instead, he will be working in a substitute position, which is substantially less in economic terms and conditions. The claimant, therefore, is not subject to the between-terms denial of benefits. In theory, the claimant's benefits should not be based on the wages in his base-period attributable to his substitute teaching. But no such calculation is possible because the employer did not have information about the times the claimant substituted or the amount of wages he earned as a substitute teacher.

DECISION:

The unemployment insurance decision dated June 28, 2012, reference 01, is reversed. The claimant is eligible to receive unemployment insurance benefits over the summer between school years, provided he is otherwise qualified.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs