

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JILANE D MITCHELL**  
Claimant

**APPEAL NO. 12A-UI-10429-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TITONKA CONSOLIDATED  
INDEPENDENT SCHOOL DISTRICT**  
Employer

**OC: 07/22/12**  
**Claimant: Respondent (2/R)**

Section 96.4-5-b – Benefits During Successive Academic Terms

**STATEMENT OF THE CASE:**

Titonka Consolidated Independent School District (employer) appealed a representative's August 22, 2012 decision (reference 02) that concluded Jilane Mitchell (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 27, 2012. The claimant participated personally. The employer participated by Julia Mogensen, business manager.

**ISSUE:**

The issue is whether the claimant is between successive terms with an educational institution.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant previously worked for the employer as a full-time teacher. For the 2010-2011 school year, the claimant worked as a substitute teacher. Her last assigned day was April 20, 2011. For the academic year 2011-2012, the claimant was a full-time employee of the Woden-Crystal Lake Community School District and did not work for the employer. The claimant is unemployed for the 2012-2013 academic year and on the list of substitute teachers for the employer. The claimant filed for unemployment insurance benefits with an effective date of July 22, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

871 IAC 24.22(2)i(2) provides:

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is

considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

The claimant was employed by an educational institution during the 2010-2011 academic year. When she filed for benefits, July 22, 2012, she was not between successive academic terms, as she did not work for the employer during the 2011-2012 academic year. The claimant is not between successive terms with an educational institution. She is not eligible to receive unemployment insurance benefits.

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 claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

**DECISION:**

The representative's August 22, 2012 decision (reference 02) is reversed. The claimant is not between successive terms with the employer and, therefore, not eligible to receive unemployment insurance benefits. The issue of the overpayment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw