

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TINA M RHODES
305 S BOOTH ST
ANAMOSA IA 52205**

**CEDAR RAPIDS COMMUNITY
SCHOOL DISTRICT
ATTN PAYROLL DEPARTMENT
346 2ND AVE SW
CEDAR RAPIDS IA 52404-2045**

**Appeal Number: 05A-UI-08164-RT
OC: 06-26-05 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-5 – Benefits Based on Service for an Educational Institution

STATEMENT OF THE CASE:

The claimant, Tina M. Rhodes, filed a timely appeal from an unemployment insurance decision dated August 2, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on August 29, 2005, with the claimant participating. Jean Milne, Benefits Specialists, participated in the hearing for the employer, Cedar Rapids Community School District. This appeal was consolidated with appeal #05A-UI-08165-RT, for the purposes of the hearing with the consent of the parties. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was and still is employed by the employer as a teacher associate for the mild and moderate disabled since August 22, 2003. The claimant has not permanently separated from her employment, but was off work beginning June 6, 2005, because the 2004-2005, school year ended at that time. The employer is a community school district accredited as such by the State Department of Education. The employer never indicated to the claimant, in any way, that her employment would be discontinued or ended by the employer. The claimant did not immediately get a contract for the 2005-2006 year or term because the claimant's union was in negotiations with the employer, and in fact, those negotiations are continuing and no contract has been issued, but the claimant has returned to work and is performing the same or similar services in the 2005-2006 school year as she did in the prior school year. When the claimant did not receive her contract, she called the employer and learned that contract negotiations were going on, but that the employer expected the claimant to be rehired in the same or similar position as she had had in the past. In fact, it was in the contemplation of both parties, that the claimant would be employed in the 2005-2006 school year, performing the same or similar services as she had in the 2004-2005 school year. The claimant filed for unemployment insurance benefits effective June 26, 2005, and established a base period. In her base period, the claimant has earnings in the third quarter of 2004 in the amount of \$1,749.00, from Target and Nordstrom. In the fourth quarter of 2004, the claimant has \$132.00 in earnings from Target. The claimant has no other earnings in her base period except from the employer herein.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is still employed by an educational institution between two successive academic years or terms and had reasonable assurance that she would be performing the same or similar services in the new academic year or term, 2005-2006, that she performed in the prior academic year or term, 2004-2005, and therefore, she would be ineligible to receive unemployment insurance benefits between the two successive academic years or terms. The administrative law judge concludes that the claimant is employed by an educational institution between two successive academic years or terms and has reasonable assurance that she will be performing the same or similar services in the new academic year as she did in the prior academic year and therefore she is ineligible to receive unemployment insurance benefits between the two successive academic years or terms.

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 administrative law judge concludes that there is a preponderance of the evidence that the claimant was employed by an educational institution performing services as a teacher associate in the prior academic year or term, 2004-2005 and that she had reasonable assurance that she would be performing the same or similar services for the employer for the employer in the new academic year or term, 2005-2006. The evidence establishes that the employer is a community school district accredited as such by the State Department of Education. Therefore, the employer is an educational institution. See 871 IAC 24.51(1). The claimant was a teacher associate and was performing instructional services. The claimant has reasonable assurance that she will be performing the same or similar services in the new academic year or term, 2005-2006 that she performed in the prior academic year or term, 2004-2005. Reasonable assurance does not require a written or verbal contract but an implied agreement is sufficient. The administrative law judge concludes that the claimant has such an implied agreement. The employer had done nothing to indicate to the claimant that she would not be similarly employed in the 2005-2006 school year. It is true that the claimant was not sent a contract, but that was because of labor union negotiations, which went long. In fact, the claimant still does not have a contract, but the claimant is employed and working in the 2005-2006 school year and she began such employment on August 22, 2005. Both parties conceded that they fully expected that the claimant would be employed in the 2005-2006 school year as she had been in the 2004-2005 school year. Accordingly, the administrative law judge concludes that the claimant had reasonable assurance. Therefore, the administrative law judge concludes that the claimant was and still is employed by an educational institution but was off work between academic years or terms and she had reasonable assurance that she would be performing the same or similar services in the 2005-2006 academic year or term that she performed in the 2004-2005 academic year or term, and therefore the claimant is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she demonstrates that she is otherwise entitled to such benefits. The administrative law judge specifically notes that the claimant does have non-school wage credits from other employers, but that those non-school wage credits are not sufficient to otherwise establish that the claimant is monetarily eligible to receive unemployment insurance benefits. See 871 IAC 24.52(6).

DECISION:

The representative's decision of August 2, 2005, reference 01, is affirmed. The claimant, Tina M. Rhodes, is not entitled to receive unemployment insurance benefits, because she is still employed by an educational institution, but is off work between two successive academic years or terms and has or had reasonable assurance that she would be performing the same or similar services in the new academic year or term, 2005-2006 that she performed in the prior academic year or term, 2004-2005.

dj/pjs