

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MYRNA F WHITLOW**  
Claimant

**APPEAL NO. 14A-UI-06553-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF DES MOINES PAYROLL DEPT-B**  
Employer

**OC: 06/01/14**  
**Claimant: Respondent (2)**

Iowa Code § 96.4-5 – Reasonable Assurance

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for non participation at Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated June 24, 2014, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 17, 2014. Claimant participated personally. Employer participated by Heather Brady, Human Resource Manager and Jack Beardsley, Des Moines Police Sargent.

**ISSUE:**

The issue in this matter is whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year. Whether claimant is overpaid unemployment insurance benefits and whether employer's account is charged due to non participation at fact finding.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: claimant was employed as a school crossing guard for the City of Des Moines for the benefit of the Des Moines Community School District during the school year starting March 15, 2013 through June 2, 2014. Claimant does not work summers. Employer, through the Des Moines Police Department gave claimant reasonable assurance of work for the next term starting August 20, 2014. Claimant works for a governmental agency to protect school children going to and leaving school. Claimant's work benefits the Des Moines Public Schools. The only reason for the crossing guard is to service the public school system. Employer on June 2, 2014 offered reasonable assurance of work for the next academic year.

Employer did participate at the fact-finding interview. Employer did present sufficient evidence at fact finding that if un rebutted would have allowed employer to win.

There is no evidence that proves claimant received benefits due to fraud or willful misrepresentation.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.4-5-b 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:

b. Benefits based on service in any other capacity for 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 terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

Iowa Admin. Code r. 871-24.51(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 claimant did have reasonable assurance of continued employment for the 2014-2015 school years. As a result, the claimant is considered unemployed. The crossing service is employment by a governmental entity and for the benefit of a school. This is precisely the type of employment that the statute meant to cover during summer breaks. Claimant is not entitled to benefits between school terms.

The next issue concerns an overpayment of unemployment insurance benefits and charges to employer's account.

Fraud or willful misrepresentation by the claimant means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment benefits. See 871 IAC 24.10(4).

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1)

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Claimant is overpaid \$465.00 for the six weeks ending July 12, 2014 due to this disqualification decision.

Employer's account shall not be charged because employer did meaningfully participate at fact finding. A waiver of overpayment is not appropriate because employer did participate.

**DECISION:**

The decision of the representative dated June 24, 2014, reference 02 is reversed. Unemployment insurance benefits shall be withheld. Employer's account shall not be charged. Claimant is overpaid \$465.00 for the six weeks ending July 12, 2014.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs