

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONDA R JOHNSON
Claimant

APPEAL NO. 11A-UI-07102-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA COMMUNITY COLLEGE
Employer

**OC: 04/17/11
Claimant: Respondent (1)**

871 IAC 24.26(22) – Fulfillment of the Contract of Hire
871 IAC 24.1(113) – Layoff
Section 96.4(5) – Between Academic Terms Disqualification
871 IAC 23.19 – Employee Versus Independent Contractor

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 19, 2011, reference 02, decision that allowed benefits effective April 17, 2011 based on an Agency conclusion that the claimant had fulfilled her contract of hire. After due notice was issued, a hearing was held on July 18, 2011. Claimant Ronda Johnson participated. Lana Dettbarn, executive director for administration, represented the employer. Exhibits One through Four were received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages reported by and for the claimant and of benefits disbursed to the claimant. The administrative law judge took official notice of the May 5, 2011, reference 01 decision.

ISSUES:

Whether Ms. Johnson was an employee or an independent contractor. She was clearly an employee.

Whether Ms. Johnson separated from the employment for a reason that disqualifies her for unemployment insurance benefits. She separated from the employment for no disqualifying reason.

Whether Ms. Johnson is disqualified for unemployment insurance benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). Due to the lack of reasonable assurance of additional employment, Ms. Johnson is not disqualified.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ronda Johnson, R.N., was employed by Eastern Iowa Community College District as a part-time, adjunct clinical nursing instructor from 2009 and last performed work for the employer on May 13, 2011, after which the employer had no additional work for her. Ms. Johnson has

signed an agreement with the employer in connection with each term she worked for the employer. The most recent teaching contract covered the dates of March 21, 2011 through May 18, 2011. According to the document, Ms. Johnson would be paid \$2,300.00 for teaching a four semester hour clinical nursing class. The document indicated that the employer would pay Ms. Johnson in five installments between April 1 and May 2. The document indicated that the classes would meet on Tuesdays and Wednesdays.

Ms. Johnson's supervisor was Ruth Sueverkruebbi, nursing department chair. Ms. Johnson would also take direction from the regular nursing program teachers with whom she shared students. The nursing program set the curriculum and provided the materials Ms. Johnson needed to carry out her duties. Ms. Johnson was subject to discharge if she failed to perform to the employer's satisfaction. Ms. Johnson was not free to hire assistants. Ms. Johnson had no uncompensated expense other than her nursing uniform and her transportation costs. Ms. Johnson had no financial investment in the venture, could not profit beyond compensation for her labor, and could not suffer a financial loss other than that associated with being discharged from the employment. Ms. Johnson was in all respects an employee of the Community College District.

The end of Ms. Johnson's employment corresponded with the end of the academic term. At the time the employment came to an end, Ms. Johnson had no assurance that she would be recalled at some point to perform additional work for the employer. Whether and when the employer has additional work for Ms. Johnson is contingent upon fall enrollment numbers. Ms. Johnson will not learn whether the employer has additional work for her until the fall.

Ms. Johnson's primary base period employment was full-time employment with Trinity Medical Center. Workforce Development determined that Ms. Johnson separated from that employment for no disqualifying reason. Ms. Johnson's application for unemployment insurance benefits was prompted by the separation from the full-time employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code section 871 IAC 23.19 sets forth the factors to be considered when determination whether a worker is an employee or an independent contractor. Several of those factors are referenced above. The legal presumption is that the worker is an employee unless the evidence proves otherwise. The evidence clearly indicates that Ms. Johnson was an employee, not an independent contractor.

The weight of the evidence establishes that Ms. Johnson worked for the employer until May 13, 2011, when she had performed all the work the employer had for her. In other words, she had completed the contract of hire. See 871 IAC 24.26(22). At that point, the employer no longer needed her and she was laid off. See 871 IAC 24.1(113)(a). Since a layoff is by definition neither a voluntary quit nor a disqualifying discharge, the layoff would not disqualify Ms. Johnson for unemployment insurance benefits. See Iowa Code section 96.5(1) and (2)(a).

The remaining issue is whether Ms. Johnson is disqualified for benefits based on wages earned through the part-time employment with the Community College District.

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

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.

c. With respect to services for an educational institution *in any capacity* under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "*educational service agency*" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

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 in the record establishes that Eastern Iowa Community College District is most certainly an "educational institution" affected by the between academic terms disqualification provision of Iowa Code section 96.4(5)(d). The evidence in the record establishes that

Ms. Johnson was a part-time professional employee of that institution during the 2010-2011 academic year. The evidence indicates that Ms. Johnson has *no* assurance that she will be returning to perform the same or similar duties after the traditional summer break. Ms. Johnson is not disqualified for benefits under Iowa Code section 96.4(5).

Ms. Johnson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Johnson.

DECISION:

The claims representative's May 19, 2011, reference 02, decision is affirmed. The claimant was an employee. The claimant fulfilled her contract of hire on May 13, 2011 and was laid off at that point. The claimant has no assurance that she will be recalled to perform similar work for the educational institution. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw