

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA K PEACHER**  
Claimant

**APPEAL NO. 08A-UI-08115-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KEOKUK – CARDINAL STRITCH**  
Employer

**OC: 07-15-07 R: 04**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(5) – Reasonable Assurance  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 15, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 25, 2008. The claimant did participate. The employer did not participate but did submit documents to be considered at the hearing. Employer's Exhibit One was received.

**ISSUES:**

Did the claimant file a timely appeal?

Did the claimant have reasonable assurance of continued employment at an education institution between academic years?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was employed at Cardinal Stritch High School for the 2007 – 2008 school year. She was given reasonable assurance that she would be returning to the school for the 2008- 2009 school year. A fact-finding decision was issued on July 15, 2008 denying her benefits because the employer represented during the fact-finding interview that she would be returning to the school. On August 15, 2008 the claimant was notified that due to declining enrollment her position was going to be eliminated and she would not be returning for the new school year. The claimant had received the July 15, 2008 reference 01 decision within ten days of it's mailing, but had not appeal based upon the employer's representations at the fact-finding interview. The claimant's appeal was late based on the representation made by the employer.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not appeal the decision based upon the representations of the employer which subsequently changed. Had the representations remained, the claimant would not have appealed. Based upon the change in the representations from the employer, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant does not have reasonable assurance of returning to work the following academic year.

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.

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 claimant does not have reasonable assurance of continued employment for the 2008-2009 school year as her position has been eliminated. As a result, the claimant is considered unemployed.

**DECISION:**

The July 15, 2008, reference 01, decision is reversed. The claimant does not have reasonable assurance of returning to work the following academic year. Benefits are allowed.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs