

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNA M AVANT
Claimant

APPEAL NO: 07A-UI-06251-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMM SCHOOL DIST
Employer

OC: 05/27/07 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Anna M. Avant (claimant) appealed a representative's June 20, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits based on wages earned with the Des Moines Independent Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2007. The claimant participated in the hearing. Cathy McKay appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

As a substitute teacher, is the claimant eligible to receive unemployment insurance benefits between academic years?

FINDINGS OF FACT:

The claimant started working for the employer in approximately April of 2005. She worked as a substitute teacher's associate in the employer's school system. She had a long-term full time assignment as a substitute associate from about September 29, 2005 through about December 21, 2005, from which time she returned to doing substitute work on an on-call basis. She normally worked about 75 percent of the time in response to calls from the employer. The employer has not changed her status for the upcoming academic year, and the claimant has not removed her name from the employer's list as a substitute teacher's associate.

REASONING AND CONCLUSIONS OF LAW:

The statute and rules limit the eligibility of an employee of an educational institution for benefits between successive terms based on wages with that institution.

Iowa Code § 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 22(2)i(2) provides in pertinent part:

(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 between contracts or terms and during customary and established periods of holiday recesses 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. . . .

871 IAC 24.52(10)(a),(d) provides:

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2) "i"(3) if they are:

- (1) Able and available for work.
- (2) Making an earnest and active search for work each week.
- (3) Placing no restrictions on their employability.
- (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

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 is employed by an educational institution. As a substitute teacher's associate she is treated the same as a substitute teacher under the statute and rules. The claimant worked for the employer during the 2006 – 2007 academic year and is expected to work for the employer during the 2007 – 2008 academic year. The two academic years are successive terms. The claimant is between successive terms with an educational institution. Her wages from the employer cannot form the basis for unemployment insurance benefit eligibility for that time.

DECISION:

The representative's June 20, 2007 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms based on wages earned from this employer.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs