

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL BENNETT
Claimant

APPEAL NO: 12A-UI-08014-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA COMMUNITY COLLEGE
Employer

OC: 07-03-11
Claimant: Appellant (1)

Section 96.4-5 – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 29, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 26, 2012. The claimant participated in the hearing. Leann Gillespie, Personnel Specialist, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the claimant received a reasonable assurance for employment in the next academic year.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time adjunct professor for Eastern Iowa Community College during the 2011- 2012 school year and the 2012 summer term. The employer does not issue contracts to the adjunct professors until after the semester has started and it knows how many students will enroll in each class. The employer does not guarantee part-time, adjunct professors a certain number of classes or a specific wage; both are dependent on the classes assigned to the professor and the number of students enrolled in his classes. The claimant has spoken to his department head and has been told he will probably be teaching two classes during the fall semester of the 2012 school year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does have a reasonable assurance of returning to work the following academic year.

Iowa Code section 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's reasonable assurance is a verbal agreement with his department head and is also implied by conversations with his employer and his previous employment during the last three semesters, including the 2012 summer term. While the claimant argues in his brief that he is underemployed rather than unemployed, he is a part-time, as-needed, employee and as such is not guaranteed a certain number of hours or wages. Under these circumstances, the administrative law judge must conclude the claimant has reasonable assurance of employment for the 2012 fall semester. Therefore, benefits must be denied. If, however, the claimant is not offered the two classes he has been told he will be teaching, he may (emphasis added) be eligible for partial unemployment benefits at that time.

DECISION:

The June 29, 2012, reference 01, decision is affirmed. The claimant does have reasonable assurance of returning to work the upcoming academic term. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css