

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**WARREN WILLIAMS
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**Appeal Number: 05A-UI-07220-RT
OC: 06-19-05 R: 04
Claimant: Appellant (4-R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-5 – Benefits Based on Service for an Educational Institution

STATEMENT OF THE CASE:

The claimant, Warren Williams, filed a timely appeal from an unemployment insurance decision dated July 13, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on August 2, 2005, with the claimant participating. Louis Harris was available to testify for the claimant but not called because his testimony would have been irrelevant, repetitive, and unnecessary. Tom Parker, Superintendent of Schools, participated in the hearing for the employer, Camanche Community School District. The employer was represented by Jerry Van Scoy, Attorney at Law. The administrative law judge takes official notice of Iowa Workforce Development Department

unemployment insurance records for the claimant. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a part-time regular education associate since August 16, 2004. Whether he has been permanently separated from that employment is not an issue before the administrative law judge at this time. In addition to his duties as regular education associate, the claimant acted as an assistant varsity football coach in the fall of 2004 and was the sophomore head basketball coach in the fall of 2004 and the winter of 2005. For acting as assistant football coach, the claimant was paid \$1,078.00. For acting as the head sophomore basketball coach, the claimant was paid \$2,059.00. In the three quarters for which Iowa Workforce Development has records, the claimant earned from the employer total earnings as follows: \$1,668.32 in the third quarter of 2004; \$3,438.51 in the fourth quarter of 2004; and \$2,394.48 in the first quarter of 2005. This total is \$7,501.31 and does not include earnings for the second quarter of 2005. Nevertheless, just based on the three quarters of earnings, the claimant's coaching comprised only 42 percent of his total earnings and this percent would be greatly reduced by the claimant's earnings in the second quarter of 2005, which would include no coaching duties.

The claimant worked for the employer the 2004-2005 school year. The employer is a community school district in the State of Iowa licensed and certified as such by the State Department of Education. As a regular education associate the claimant's duties were to supervise an open study hall and supervise students but not provide any real academic assistance. On May 17, 2005, the claimant was sent a letter of assignment-classified employee as shown at Employer's Exhibit One offering the claimant the same position as regular education associate for the 2005-2006 school year that he had occupied in the 2004-2005 school year. The claimant signed this letter of assignment on May 20, 2005, accepting his employment based on the conditions in the letter of assignment and returned it to the employer. The last day of work for the 2004-2005 school year was June 6, 2005 when the school year ended. Sometime after the claimant signed the letter of assignment, he was informed by the athletic director that the coaching positions would be re-opened and new applications would be taken. The claimant was invited to apply for those positions. The claimant did not do so. The claimant now maintains that he was discharged when he was informed that the coaching jobs he had taken in the 2004-2005 school year would be re-opened and new applications taken.

The claimant averaged approximately 30 hours per week in his position as regular education associate working only in that position. This position, the regular education associate position, was the initial reason for the claimant's hiring. He was then asked to be an assistant varsity football coach and accepted. Later, on or about November 17, 2004, the claimant signed a letter that he would act as the head sophomore basketball coach. Pursuant to his claim for unemployment insurance benefits filed effective June 19, 2005, the claimant has received no unemployment insurance benefits. Records show the claimant is overpaid unemployment insurance benefits in the amount of \$329.00 for 2002. Pursuant to his claim for benefits, the claimant has earnings in his base period from other employers as follows: In the first quarter of 2004, \$21.00 from the City of Clinton and \$2,919.00 from Des Moines Services, Inc.; in the second quarter of 2004, \$1,137.00 from Des Moines Services, Inc.; in the third quarter of 2004, \$303.00 from Motel 6 and \$11.00 from McDonald's; and in the fourth quarter of 2004, \$27.00 from Motel 6.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is still employed by an educational institution between two successive academic years or terms and is merely temporarily unemployed and not at work between those two successive academic years or terms and he has reasonable assurance of performing the same or similar functions in the new academic year or term, 2005-2006, that he performed in the prior academic year or term, 2004-2005 and would, therefore, be ineligible to receive unemployment insurance benefits. The administrative law judge concludes that the claimant is potentially ineligible to receive unemployment insurance benefits for that reason.

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 administrative law judge concludes that the claimant is temporarily unemployed or off work from an educational institution between two successive academic years or terms and has reasonable assurance that he will be performing the same or similar services in the new academic year or term, 2005-2006 as he did in the 2004-2005 school year. As a result, the

administrative law judge concludes that the claimant is potentially ineligible to receive unemployment insurance benefits during the period between the two academic years or terms. The evidence establishes that the claimant was primarily and initially hired as a regular education associate. Over three quarters, which omits the fourth quarter of his employment solely as a regular education associate, the claimant earned 52 percent of his income from the position as a regular education associate. This percentage will dramatically increase when the fourth quarter earnings are added in because all of those earnings were for the position of a regular education associate. The claimant worked approximately 30 hours per week as a regular education associate. It appears that the claimant was hired as an assistant varsity football coach as an after thought after having initially been hired for the regular education associate although the contracts for both were approximately simultaneous. Later, the claimant was hired as the head sophomore basketball coach on November 17, 2004. Accordingly, the administrative law judge concludes that the claimant's primary function was to act as a regular education associate. This position is not instructional. However, the claimant is employed by an educational institution. The evidence is clear that the employer is a recognized community school district in the state of Iowa and is an educational institution. See 871 IAC 24.51(1). The administrative law judge also concludes that the claimant has reasonable assurance that he will be performing services in the same capacity for the new or ensuing school year or term, 2005-2006, as he had in the prior academic year or term, 2004-2005. This is shown by the letter of assignment at Employer's Exhibit One which the claimant signed on May 20, 2005. Accordingly, the administrative law judge concludes that the claimant is potentially ineligible to receive unemployment insurance benefits between the successive academic years or terms.

The claimant maintains that he was informed that the coaching positions would be re-opened and new applications taken. The claimant was allowed to re-apply for these positions. The claimant believes that this changes his assignment. The administrative law judge disagrees. The claimant's main assignment as noted above was as a regular education associate and he was going to be permitted to continue this position. In fact there is no evidence that the claimant would not have been allowed to continue his coaching positions. The claimant could have applied and may have well been accepted for those positions.

The claimant does appear to be otherwise monetarily eligible to receive unemployment insurance benefits based on wages and earnings from other non-school employers as set out in the findings of fact. Accordingly, the administrative law judge concludes that the claimant is still entitled to receive unemployment insurance benefits based on these wage credits from other employers, which were non-school employers. The administrative law judge is unable to determine the amount of benefits or weekly benefit amount to which the claimant is entitled based upon these non-school wage credits. Therefore, this matter must be remanded to Claims for an investigation and determination as to the amount of unemployment insurance benefits to which the claimant is entitled based upon the wage credits from these other non-school employers.

The claimant now maintains that he has been permanently separated from his employment. The employer disagrees. A permanent separation issue, whether the claimant is disqualified to receive unemployment insurance benefits either because he was discharged for disqualifying misconduct or because he left work voluntarily without good cause attributable to the employer, is not before the administrative law judge at this time because it was not set out on the notice of appeal and telephone hearing. This matter should also be remanded to Claims for an investigation and determination as to whether the claimant has in fact been separated from his employment and, if so, whether the claimant is disqualified to receive unemployment insurance benefits because of that separation.

DECISION:

The representative's decision of July 13, 2005, reference 01, is modified. The claimant, Warren Williams, is temporarily unemployed or off work for an educational institution between two successive years or terms and has reasonable assurance and, therefore, any wage credits from the employer herein shall not be used to determine the claimant's unemployment insurance benefits nor shall the account of the employer herein be charged for any such benefits. However, because the claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on wage credits from other non-school employers, the claimant is not ineligible to receive unemployment insurance benefits. However, this matter must be remanded to Claims for an investigation and determination as to the amount of benefits or weekly benefit amount to which the claimant is entitled based on these other wage credits from non-school employers. Since the claimant claims that he has been permanently separated from his position and the administrative law judge cannot address that issue now, this matter should also be remanded to Claims for an investigation and determination as to whether the claimant is permanently separated from his employment and, if so, whether he is disqualified to receive unemployment insurance benefits as a result of that permanent separation, either because he was discharged for disqualifying misconduct or because he voluntarily left his employment without good cause attributable to the employer. The claimant has received no unemployment insurance benefits since filing for such benefits effective June 19, 2005 but records indicate that the claimant is overpaid unemployment insurance benefits in the amount of \$329.00 from 2002.

REMAND:

This matter is remanded to Claims first for an investigation and determination as to the amount of unemployment insurance benefits or weekly benefit amount to which the claimant is entitled based on wage credits the claimant has from other non-school employers. At least during the time that the claimant was temporarily unemployed or off work between successive academic years or terms, earnings from the employer herein shall not be included in the computation of those benefits nor shall the employer herein be charged for any such benefits to which the claimant is entitled. This matter should also be remanded to Claims for an investigation and determination as to whether the claimant is or has been permanently separated from his employment and, if so, whether the claimant is disqualified to receive unemployment insurance benefits, either because he was discharged for disqualifying misconduct or because he left his employment voluntarily without good cause attributable to the employer.

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