

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC A BROWN**  
Claimant

**APPEAL NO. 12A-UI-09035-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COLLEGE COMMUNITY SCHOOL DISTRICT**  
Employer

**OC: 06/24/12**  
**Claimant: Appellant (4)**

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification  
Iowa Code Section 96.5(1) – Layoff

**STATEMENT OF THE CASE:**

Eric Brown filed a timely appeal from the July 20, 2012, reference 01, decision that allowed benefits based on non-education related employers provided he was otherwise eligible, *but* which excluded wages from the above education-related employer based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on August 21, 2012. Mr. Brown participated. Jim Rotter, Executive Director of Business Services, represented the employer. The administrative law judge received Exhibit A into evidence took official notice of the agency's administrative record of quarterly wages reported by the employer.

The parties waived formal notice on the issues pertaining to the claimant's *separation* from the employment including the issues of whether the claimant voluntarily quit for good cause attributable to the employer or was discharged for misconduct in connection with the employment.

**ISSUE:**

Whether Mr. Brown is disqualified for unemployment insurance benefits based on wages earned through the employment with College Community School District due to the between academic terms disqualification provision set forth at Iowa Code section 96.4(5).

Whether Mr. Brown separated from the employment for a reason that would disqualify him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: in January 2012, Mark Gronemeyer, College Community School District High School Principal, hired Eric Brown as a full-time high school social studies replacement teacher to serve the district for remainder of the 2011-2012 academic year. Before the district hired him for the full-time position, Mr. Brown had registered for work as a substitute teacher for the district. At the time Mr. Brown accepted the full-time replacement teacher position, Mr. Gronemeyer indicated there

was no guarantee of employment in the full-time teaching position beyond the 2011-2012 academic year, but that Mr. Brown could be considered for the full-time teaching position to be filled for the next academic year. Mr. Brown last performed work for the school district on May 30, 2012, the last day of the 2011-2012 academic year. At that point, Mr. Brown had performed all the work the district had for him. Prior to the end of the school year, Principal Gronemeyer notified Mr. Brown that the district had hired a more experienced teacher to fill the social studies teaching position. *As a condition of his employment* in the replacement teacher position, the employer *required* that Mr. Brown tender a written resignation, which the employer accepted on March 19, 2012. The district requires such "resignations" to be on file so that the district can avoid putting a letter of dismissal in the employee's personnel file. Mr. Brown's separation from the employment at the end of the 2011-2012 was not voluntary and the district would have ended the full-time replacement teacher employment effective May 30, 2012 regardless of whether Mr. Brown had submitted the "resignation."

This District made no contact with Mr. Brown to provide him with any assurance of continued employment in any capacity during the 2012-2013 academic year. Over the summer, Mr. Brown registered for additional substitute teacher work with the College Community School District through a third-party substitute teacher clearinghouse.

#### **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The weight of the evidence in the record establishes that the employer laid off Mr. Brown from the full-time replacement teacher position effective May 30, 2012. The layoff would not disqualify Mr. Brown for unemployment insurance benefits. Based on the separation from the full-time replacement teacher position, the employer's account may be charged for benefits paid to Mr. Brown if and when the employer becomes a base period employer. A base period employer is defined as an employer for whom the claimant worked during any of the first four of the last five calendar quarters that predate the quarter in which the claimant files the claim for benefits. For purposes of the claim that Mr. Brown established in June of 2012, the base. Employers are those for whom Mr. Brown worked during the for calendar quarters of 2011. Thus, this employer will not be charged for any benefits paid to the claimant in connection with the claim year that was effective June 24, 2012, but the employer's account may be charged in

the event that Mr. Brown establishes a claim for benefits on or after June 23, 2013 and is otherwise deemed eligible for benefits.

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.

The weight of the evidence in the record establishes that Mr. Brown worked as a full-time teaching professional at the college community school district's high school, which certainly qualifies as an educational institution. The evidence indicates that Mr. Brown had no assurance of further employment beyond the end of the 2011-2012 academic year. On the contrary, Mr. Brown had specific assurance from the high school principal that he would not be performing work in the same or a similar capacity in the 2012-2013 academic year. Thus, if this employer were a base period employer, the between academic terms disqualification provision in Iowa code section 96.4(5) would not prevent the claimant from being eligible for benefits based on this employment and would leave the employer subject to liability for benefits paid to the claimant. However, because the employer is not a base period employer for purposes of the claim that was effective June 24, 2012, the employer will not be charged for benefits paid to the claimant in connection with that claim year, but the employer's account may be charged in the event that Mr. Brown establishes a claim for benefits on or after June 23, 2013 and is otherwise deemed eligible for benefits.

**DECISION:**

The claims representative's July 20, 2012, reference 01, decision is modified as follows. The claimant was laid off from a full-time teaching position effective May 30, 2011. The layoff would not disqualify the claimant for unemployment insurance benefits. At the end of the 2011-2012 academic year claimant had no assurance that he would perform the same or similar work after the summer break during the 2012-2013 academic year. The between academic terms disqualification provision set forth at Iowa Code section 96.4(5) would not apply to the claimant in the context of the employment with College Community School District. Because the employer is not a base period employer for purposes of the claim that was effective June 24, 2012, the employer will not be charged for benefits paid to the claimant in connection with that claim year. The employer's account may be charged in the event that the claimant establishes a claim for benefits on or after June 23, 2013 and is otherwise deemed eligible for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs