

**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**

**ANITA L BOSTON
1283 DIXON ST
DES MOINES IA 50316**

**DES MOINES INDEPENDENT COMMUNITY
SCHOOL DISTRICT
ATTN: BUSINESS/FINANCE
1801 16TH ST
DES MOINES IA 50314-1902**

**Appeal Number: 04A-UI-10498-RT
OC: 08-29-04 R: 02
Claimant: Respondent (5)**

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 96.5-2-a – Discharge for Misconduct
Section 96.4-5 – Benefits Based on Service for an Educational Institution
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Des Moines Independent Community School District, filed a timely appeal from an unemployment insurance decision dated September 20, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Anita L. Boston because she had not been offered employment for the next academic year or term and did not have reasonable assurance for that academic year or term. After due notice was issued, a telephone hearing was held on October 19, 2004, with the claimant participating. The employer did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the

notice of appeal. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer full-time in the 2003-2004 school year; working 4.5 hours per day at the Metro Kids Care at Monroe Elementary School and 6 hours per day at the Evelyn Davis Early Learning Center. She began the assignment at the Evelyn Davis Early Learning Center in April 2004. The claimant then worked full-time over the summer of 2004 at the Evelyn Davis Early Learning Center working 7.5 hours per day. The claimant wanted to continue to work full-time at the Evelyn Davis Early Learning Center in the 2004-2005 school year. In late July 2004, the claimant and others were told that they would have to reapply for positions at the Evelyn Davis Early Learning Center. The claimant did so. In early August 2004, the claimant was then told by the Director, Gretchen Woods, that she would be given a full-time position at the Evelyn Davis Early Learning Center for the 2004-2005 school year similar to the one she held over the summer. The claimant accepted this offer. The summer position at Evelyn Davis Early Learning Center ended on or about August 20, 2004. The 2004-2005 school year was to begin on or about August 27, 2004. Approximately, August 10, 2004, the claimant spoke to Mary Bryant of human resources and was told that all positions at the Evelyn Davis Early Learning Center were filled and that there was no position for the claimant. The claimant was surprised at this since she had been promised a position and then asked if she could be considered for a sub-associate in a regular school. She was told to come down and apply. The claimant did so and then was told that there were no such positions available for her. The claimant was told this on or about August 18, 2004. The claimant's position of 4.5 hours at Metro Kids Care at Monroe Elementary School ended with the end of the 2004 school year. The claimant never resigned from that position or any other position, but believes she had a full-time position at the Evelyn Davis Early Learning Center and then was told that there were no positions available for the claimant.

Pursuant to her claim for unemployment insurance benefits filed effective August 29, 2004, the claimant has received unemployment insurance benefits in the amount of \$726.00 as follows: \$121.00 per week for six weeks from benefit week ending September 11, 2004 to benefit week ending October 16, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant has permanently separated from her employment and, if so, whether that separation was a disqualifying event. The claimant has permanently separated from her employment with the employer and it was not a disqualifying event.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because she was still employed by an educational institution between two successive academic years or terms and had reasonable assurance. The claimant was employed by an educational institution between two successive academic years or terms, 2003-2004 and 2004-2005 and had reasonable assurance until the claimant was separated on or about August 18, 2004.
3. Whether the claimant is overpaid unemployment insurance benefits. She is not.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The first issue to be resolved is the character of the separation. The claimant maintains that she was terminated or effectively discharged on August 18, 2004 when she was informed that there was no sub-associate position in the regular school system available to her and had previously been told on or about August 10, 2004 that there was no longer a full-time position available for her at the Evelyn Davis Early Learning Center. The employer seems to imply that the claimant voluntarily left her employment. The administrative law judge concludes based upon the evidence in the record that the claimant was actually laid off for a lack of work on August 18, 2004 when she learned there was no sub-associate positions available to her after having previously learned on August 10, 2004 that there were no positions at the Evelyn Davis Early Learning Center available to her. The claimant had been offered and accepted a position with the Evelyn Davis Early Learning Center early in August 2004 but then learned shortly thereafter that there were no positions available to her. The administrative law judge therefore concludes that what really happened here was that the claimant was laid off for a lack of work by the employer effective August 18, 2004. Such a layoff or separation is not disqualifying.

Accordingly, the administrative law judge concludes that the claimant is not disqualified to receive unemployment insurance benefits.

Even should the claimant's separation be considered a discharge, there is no evidence that the claimant was discharged for disqualifying misconduct and the claimant would still not be disqualified to receive unemployment insurance benefits. The claimant was adamant that she did not resign from any position and therefore the administrative law judge concludes that the claimant did not voluntarily quit any position.

The initial decision from which the claimant appealed indicated that she had not been offered employment for the next academic year or term and did not have reasonable assurance and therefore benefits are allowed effective August 29, 2004. The administrative law judge notes that the claimant was actually fully employed with the employer through the summer of 2004 until on or about August 20, 2004 when she was ready to begin the new school year 2004-2005 and learned that there would be no positions available to her. The claimant did have reasonable assurance of a position until August 10, 2004 when she was told that the position that had been promised to her and which she had accepted was no longer available. At that point, the claimant had no reasonable assurance and would have been eligible for unemployment insurance benefits except that she was fully employed at that time and remained so until August 20, 2004. See Iowa Code section 96.5(5)(a & b) and 871 IAC 24.51(6). The claimant would be eligible to receive unemployment insurance benefits from and after August 20, 2004 when she learned that the position at Evelyn Davis Early Learning Center would not be available to her and she completed her summer employment but the claimant did not file for unemployment insurance benefits until an effective date of August 29, 2004.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$726.00 since separating from the employer herein on or about August 18, 2004 and filing for such benefits effective August 29, 2004. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision dated September 20, 2004, reference 01, is modified. The claimant, Anita L. Boston, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was laid off for a lack of work on August 18, 2004. The

claimant did not have reasonable assurance of employment in the new academic school year or term, 2004-2005, from and after August 10, 2004, but was employed until August 20, 2004. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

kjf/b