

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREA N MCDOWELL**  
Claimant

**APPEAL NO. 08A-UI-08023-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVENPORT COMMUNITY  
SCHOOL DISTRICT**  
Employer

**OC: 08/03/08 R: 04**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 2, 2008, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on September 24, 2008. Claimant participated. Employer participated through Jenni Weipert.

**ISSUE:**

The issue is whether claimant had reasonable assurance of continued employment in the next school term.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time para educator working 7 a.m. to 1 p.m. for a day care center in the Davenport Community School District during the 2007 – 2008 school year. Employer mailed claimant a letter dated June 27 advising her she would have reasonable assurance of continued employment in the next school term. Claimant did not receive that letter until late July but was advised in mid-July that the day care center where she was working would close on July 31. On August 2 employer formally offered her a para educator position at Lincoln Elementary School, within three miles of her former position, at the same rate of pay and number of hours per week but with a schedule change from 8 or 8:45 a.m. to 2 to 3:45 p.m. She did not accept the position, because she was taking a class required for graduation starting at 2 p.m. She did bid for and accepted a position on August 18 as a health para educator four hours daily from 9 a.m. to 1 p.m.

**REASONING AND CONCLUSIONS OF LAW:**

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

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

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 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 did have reasonable assurance of continued employment for the 2008-2009 school year and opted to accept a position with fewer hours to accommodate her school schedule. As a result, the claimant was not considered unemployed.

**DECISION:**

The September 2, 2008, reference 02, decision is reversed. The claimant did have reasonable assurance of returning to work the following academic year. Benefits are withheld effective August 3, 2008.

**REMAND:** The potential overpayment issue is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw