

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

DUANE A BLAIR
1325½ LINCOLN AVE
DUBUQUE IA 52001

DUBUQUE COMMUNITY
SCHOOL DISTRICT
ATTN DIRECTOR
2300 CHANEY RD
DUBUQUE IA 52001

Appeal Number: 05A-UI-06147-DT
OC: 05/15/05 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-a – Benefits During Successive Academic Terms

STATEMENT OF THE CASE:

Duane A. Blair (claimant) appealed a representative's June 7, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with the Dubuque Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer in September 1995. He works part time as a bus driver on an hourly basis. The last day he drove in the 2004-2005 academic year was June 3, 2005. He was paid for five days through June 10, 2005 for cleaning out the busses. He is on-call during the summer as a substitute bus driver for summer school; as of the date of the hearing, he had driven two days. Toward the end of May 2005, he signed a contract to return as a driver for the 2005-2006 academic year, and is to return on or about August 29, 2005. Bidding for specific routes will occur between the drivers approximately the first week of August. The claimant currently does have some additional part-time employment, although his employment with the school district was his primary base period employment. During the base period, he did have other wages in other part time employment in the third quarter of 2004 in the amount of \$150.00, and in the fourth quarter of 2004 in the amount of \$1,152.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for unemployment insurance benefits between successive terms with an educational institution based on wages from that institution.

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.

The claimant is employed by an educational institution. The claimant worked for the employer during the 2004-2005 academic year and has a reasonable expectation of working for the employer during the 2005-2006 academic year. The two academic years are successive terms. The claimant is between successive terms with an educational institution. He may not receive benefits based on his service with the employer.

The claimant does have some base period wages not from the employer. The matter is remanded to the Claims Section to determine whether the claimant has sufficient wages from other employment to support a claim for unemployment insurance benefits, and if so, to determine the amount of that eligibility.

DECISION:

The representative's June 7, 2005 decision (reference 02) is modified in favor of the claimant. The claimant is not eligible to receive unemployment insurance benefits based upon his wages from the employer. The matter is remanded to the Claims Section for investigation and determination of his potential eligibility on his other base period wages.

ld/kjw