

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK L ADAMS

Claimant

APPEAL NO. 13A-UI-07974-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES PAYROLL DEPT – B

Employer

OC: 05/19/13

Claimant: Respondent (4-R)

871 IAC 24.1(113) – Layoff

Iowa Code Section 96.4(5)(b) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 25, 2013, reference 01, decision that allowed benefits effective May 19, 2013 based on an agency conclusion that claimant Jack Adams was on a short-term layoff. After due notice was issued, a hearing was held on August 15, 2013. Claimant Jack Adams participated and presented additional testimony through Maris Adams. Carol Moser, Assistant City Attorney, represented the employer and presented testimony through Vivone Abdel-Razeq. Exhibits A through F were received into evidence.

ISSUE:

Whether Mr. Adams has been temporarily laid off from his City of Des Moines part-time employment during any week since he established the claim for benefits that was effective May 19, 2013. He was.

Whether Mr. Adams' claim for benefits is subject to the between academic terms disqualification provision set forth at Iowa Code section 96.4(5). It is.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jack Adams is an 83-year-old gentlemen and is employed by the City of Des Moines as a part-time school crossing guard. Mr. Adams' regular post is East 15th and Grand Ave. Mr. Adams' most recent period of employment began in August 2012. When school is in session, Mr. Adams works 10 hours per week. When school is not in session, the City of Des Moines does not make work available to Mr. Adams. The Des Moines Independent Community School District's 2012-2013 academic year ended on or about May 18, 2013. At that time, Mr. Adams had an understanding and agreement with the Des Moines Police Department that he would return to the same or similar duties when school started up again.

Mr. Adams established a claim for unemployment insurance benefits that was deemed effective May 19, 2013. Workforce Development calculated Mr. Adams' weekly benefit amount to be \$65.00. For the week ending May 25, 2013, Ms. Adams reported \$109.00 in wages and

received no unemployment insurance benefits. For the weeks ending June 1, 8, 15, 22 and 29, and July 6 and 13, Mr. Adams reported zero wages and received \$65.00 per week in unemployment insurance benefits. The City of Des Moines did not have any work for Mr. Adams during those weeks. For the week that ended July 20, 2013, Mr. Adams reported \$27.00 in wages and received \$54.00 in benefits. Mr. Adams then discontinued the claim for benefits because school had restarted and the City of Des Moines again had work for Mr. Adams. The total amount of benefits disbursed to Mr. Adams for the period of May 26, 2013 through July 20, 2013 was \$509.00.

At the time Mr. Adams began his employment, the City of Des Moines had him sign a Terms of Employment document that reads as follows:

I, Jack L. Adams, understand that the School Crossing Guard position with the City of Des Moines' Police Department that I have accepted is Regular Less than Half-Time. I further understand that I may work approximately 10 hours per week provided that work is available and school is in session.

Mr. Adams signed the document on August 9, 2012.

Prior to the current employment, Mr. Adams had worked for the City of Des Moines from 2008 to 2011 under similar terms.

Mr. Adams' sole base period employer for purposes of the claim that was effective May 19, 2013, is the City of Des Moines. All of the base period wages derive from Mr. Adams' work as a school crossing guard.

REASONING AND CONCLUSIONS OF LAW:

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. 871 IAC 24.1(113)(a).

The evidence indicates that Mr. Adams was indeed temporarily laid off from his part-time position with the City of Des Moines effective May 18, 2013, at which time the City of Des Moines had no work for him because school was not in session. Mr. Adams was recalled to the City employment on July 18, 2013. Mr. Adams would be eligible for unemployment insurance benefits during the period of the layoff if his employment were not subject to the between academic disqualification provision of Iowa Code section 96.4(5).

The between academic terms disqualification set forth at Iowa Code section 96.4(5)(a-c) 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.

When Mr. Adams was working as a part-time school crossing guard he was providing service to an educational institution, namely the Des Moines Independent Community School District, while employed by a government entity, namely the City of Des Moines. Under the statute, Mr. Adams was not eligible for unemployment insurance benefits in between academic terms if he had reasonable assurance before the academic break that he would return to the same or similar employment after the break. The evidence indicates that Mr. Adams had such assurance. Because Mr. Adams claim for benefits is subject to the between academic terms disqualification, and because the wage history upon which the claim is based consists solely of wages from the City of Des Moines, Mr. Adams was not eligible for the benefits he received for the period of May 26, 2013 through July 20, 2013. This matter will be remanded to the Claims Division for entry of an overpayment decision.

DECISION:

The agency representative's June 25, 2013, reference 01, decision is modified as follows. The claimant was temporarily laid off effective May 18, 2013 and was recalled on July 18, 2013. The claim for benefits was subject to the between academic terms disqualification provision set forth in Iowa Code section 96.4(5). Under that statute, the claimant was not eligible for the benefits he received for the period of May 26, 2013 through July 20, 2013.

This matter is remanded to the Claims Division for entry of an overpayment decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs