

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN D STITES**  
Claimant

**APPEAL NO: 13A-UI-07536-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**OC: 05/26/13**  
**Claimant: Appellant (1)**

Section 96.4-5-a – Benefits During Successive Academic Terms

**STATEMENT OF THE CASE:**

John D. Stites (claimant) appealed a representative's June 17, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits based upon wages paid by the employer. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 31, 2013. This appeal was consolidated for hearing with one related appeal, 13A-UI-07537-D. The claimant participated in the hearing. Cathy McKay participated on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

As a substitute teacher, is the claimant eligible to receive unemployment insurance benefits between academic years?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 18, 2010. To date, he has worked on a relatively weekly basis as a substitute teacher in the employer's school system. He is either called for work as needed, or he checks online for available substitutions and accepts the available work. After substitute teachers are added to the employer's substitute teacher list, they remain on the list unless or until they request to be removed. The claimant remains eligible and aware he continues to be eligible to be called as a substitute teacher in the employer's school system in the upcoming academic term.

The claimant established a claim for unemployment insurance benefits effective May 26, 2013 upon the end of the 2012 – 2013 academic term. The claimant has no wages from any other employer during his base period other than the wages earned from this employer.

**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.

Iowa Code section 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 22(2)i(2) provides in pertinent part:

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. . . .

871 IAC 24.52(10)(a),(d) provides:

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)“(3) if they are:

(1) Able and available for work.

(2) Making an earnest and active search for work each week.

(3) Placing no restrictions on their employability.

(4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

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 is employed by an educational institution as a substitute teacher. The claimant worked for the employer during the 2012 – 2013 academic year and is expected to work for the employer during the 2013 – 2014 academic year on the same basis in which he worked in the prior academic year. The two academic years are successive terms. The claimant is between successive terms with an educational institution.

**DECISION:**

The representative's June 17, 2013 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer based on wages earned from this employer; as he has no other wages upon which benefits can be paid, benefits are denied during the weeks between the successive terms.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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