

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

KATHLEEN A POLICHA
829 – 6TH AVE SOUTH
CLINTON IA 52732

IOWA EAST CENTRAL T R A I N
2804 EASTERN AVE
DAVENPORT IA 52803-2012

Appeal Number: 04A-UI-06578-AT
OC: 06/01/03 R: 04
Claimant: Appellant (2)

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 96.4-3 – Eligibility for Benefits
871 IAC 24.52(7) – Head Start Employees

STATEMENT OF THE CASE:

Kathleen A. Policha filed a timely appeal from an unemployment insurance decision dated June 11, 2004, reference 01, which denied benefits to her effective May 16, 2004 upon a finding that she was an employee of an educational institution with reasonable assurance of continued employment in the upcoming academic year. After due notice was issued, a telephone hearing was held on July 6, 2004 with Ms. Policha participating. Benefits Administrator Pam Damhorst participated for the employer, Iowa East Central T.R.A.I.N. Exhibit One was admitted into evidence. This matter is considered on a consolidated record with 04A-UI-06577-AT.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kathleen A. Policha has been employed as a Head Start teacher by Iowa East Central T.R.A.I.N. since September 1994. She is laid off for the summer but anticipates continued work in the fall. Iowa East Central T.R.A.I.N. operates a Head Start Program in Eastern Iowa. Approximately 70 percent of its budget comes from the Head Start Program, and approximately 70 percent of its employees are engaged in the program. In addition, Iowa East Central T.R.A.I.N. operates a weatherization program, a heating assistance program, family monitoring and an emergency food pantry. Its employee handbook refers to the organization as providing a "broad range of services."

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Policha is eligible for unemployment insurance benefits for the summer of 2004. The administrative law judge concludes that she is.

A provision of the Iowa Administrative Code, 871 IAC 24.52(7) deals with the unemployment insurance treatment of Head Start Employees between academic years and semesters. The language of the rule is somewhat ambiguous. On one hand, it states that benefits will be denied if the employer "is operated primarily for educational purposes." On the other hand, it also states, "Community action programs which have a head start school as one component are not an educational employer and the between terms denial does not apply."

The evidence in this record establishes that approximately 70 percent of the employer's funding comes from Head Start and that approximately 70 percent of its employees provide services in the head start program. The real question is whether a 70 percent commitment to educational purposes is sufficient to trigger the between terms denial.

To answer the question the administrative law judge compares Iowa East Central T.R.A.I.N. to a school district. The administrative law judge concludes that Iowa East Central T.R.A.I.N. falls well short of the commitment to educational activities found in a school district. The administrative law judge believes that substantially all of a school district's employees are engaged in the function of educating students, either directly or in a support capacity. Similarly, the administrative law judge believes that substantially all of a school district's funding is for the purpose of providing educational services. The administrative law judge also notes that Iowa East Central T.R.A.I.N. provides several services, which one would not find being provided by a local community school district.

Finding these distinctions, the administrative law judge concludes that the between terms denial of unemployment insurance benefits is not warranted. In reaching this conclusion, the administrative law judge is aware that other administrative law judges hearing similar evidence involving this employer have reached the opposite conclusion. It is beyond the authority of this administrative law judge to resolve this issue.

DECISION:

The unemployment insurance decision dated June 11, 2004, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjf/b