

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REX T ROMINGER
Claimant

APPEAL NO. 16A-UI-09280-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARDINAL COMMUNITY SCHOOL DIST
Employer

OC: 07/03/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Rex Rominger filed a timely appeal from the August 16, 2016, reference 03, decision that denied benefits effective July 3, 2016, based on an agency conclusion that the claimant not eligible for benefits between academic years or terms pursuant to Iowa Code section 96.4(5). After due notice was issued, a hearing was held on September 13, 2016. Mr. Rominger participated. Robin Leonard, Business Manager, represented the employer. Exhibits One and A were received into evidence.

ISSUE:

Whether Mr. Rominger is disqualified for unemployment insurance benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rex Rominger began his employment with the Cardinal Community School District in December 2015 and last performed work for the employer on May 19, 2016. Mr. Rominger has worked for the District as a substitute teacher. Mr. Rominger has also worked for the employer as a substitute paraprofessional assisting a particular student. The District's 2015-2016 academic year ended on May 26, 2016. Up to that time, Mr. Rominger performed all the work the district had for him. Prior to the end of the academic year, a district representative asked Mr. Rominger whether he would be returning to do more substitute teaching in the 2016-2017 academic year. Mr. Rominger indicated that he planned to return if the District would have him. The 2016-2017 academic year began on August 23, 2016. Before school started, a District representative contacted Mr. Rominger to confirm that he would be available for substitute teaching assignments during the new academic year. Mr. Rominger continues on the District's roster of active substitute teachers.

Mr. Rominger established a claim for benefits that was effective July 3, 2016. Mr. Rominger had attempted to establish a claim for benefits in early June. Workforce Development cancelled the June claim because Mr. Rominger lacked sufficient wages to be monetarily eligible for benefits. Almost all of Mr. Rominger's base period wages in connection with the July 3, 2016

claim derive from substitute teaching. Mr. Rominger lacks sufficient base period wages to be monetarily eligible for benefits without inclusion of the substitute teaching wages.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

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.

871 IAC 24.52(6) provides as follows:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Cardinal Community School District is an “educational institution” affected by the between academic terms disqualification provision Iowa Code section 96.4(5). Mr. Rominger’s substitute teaching work and substitute paraprofessional work for the District amounted to work as a professional employee under the statute. The weight of the evidence establishes that at the end of the 2015-2016 academic year in May 2016, Mr. Rominger had reasonable assurance of employment in a similar capacity during the 2016-2017 academic year. Because Mr. Rominger’s unemployment insurance claim fell between academic years and because he had reasonable assurance of continued employment in the same capacity in the new academic year, Mr. Rominger is disqualified for benefits based on the school-based wages under the between academic terms disqualification provision of Iowa Code section 96.4(5). Mr. Rominger lacks sufficient non-school-based wages to be monetarily eligible for benefits. Effective July 3, 2016, benefits are denied.

DECISION:

The August 16, 2016, reference 03, decision is affirmed. The claimant is disqualified for benefits based on the between academic terms disqualification provisions of Iowa Code section 96.4(5). Benefits are denied effective July 3, 2016.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs