

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET G SHIVERS-SCOTT
Claimant

APPEAL NO. 07A-UI-08223-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DAVENPORT COMMUNITY
SCHOOL DISTRICT**
Employer

**OC: 06-17-07 R: 04
Claimant: Appellant (1-R)**

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 21, 2007, reference 02, decision that allowed benefits but removed wage credits from the claimant's base period on which her unemployment insurance benefits were calculated. After due notice was issued, a hearing was held on September 12, 2007. The claimant did participate. The employer did participate through Rita Watts, Interim Associate Director of Human Resources, and Tina Moeller, Administrative Assistant in Human Resources.

ISSUE:

Was the claimant employed by an educational institution between two successive academic years?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a para-educator, part-time, beginning October 31, 2006, through June of 2007, when the school year ended for summer break. The claimant was sent a letter of reasonable assurance in June of 2007 assuring her that a para-educator position would be available for her when school began in the fall of 2007. The claimant filed for unemployment insurance benefits when the 2007 school year ended, as she was laid off by the City of Davenport from her school crossing guard job during the summer.

When the school year began, the claimant was offered two different positions as a para-educator at two different schools. She refused those positions and was separated from her employment with Davenport Community School District in August 2007. There has not been a fact-finding interview on the claimant's separation from her last employer.

The claimant admits that she knew in June 2007 that there would be a para-educator job available for her when the 2007 school year began again. The claimant worked for the school district one additional week during the end of July and the beginning of August 2007, when school was getting ready to start.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does have reasonable assurance of returning to work the following academic year.

Iowa Code § 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.

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.

When the claimant applied for unemployment insurance benefits in June 2007 she did have reasonable assurance of continued employment for the 2007-2008 school year. As a result, the claimant is not considered unemployed. The claimant was eligible for benefits due to a layoff from a non-educational employer, but the wages she earned from Davenport Community School District shall be removed from claim.

DECISION:

The August 21, 2007, reference 02, decision is affirmed. The claimant did have reasonable assurance of returning to work the following academic year. Wage credits earned from Davenport Community School shall be removed from the claimant's claim.

REMAND:

The separation issue delineated in the findings of fact is remanded for an initial review and determination.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw