

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC A CALDWELL
Claimant

APPEAL NO. 15A-UI-00461-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA COMMUNITY COLLEGE
Employer

OC: 10/05/14
Claimant: Respondent (2-R)

Section 96.4(5)a – Reasonable Assurance of Employment
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Eastern Iowa Community College filed a timely appeal from a representative's decision dated January 5, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits effective December 14, 2014 finding the claimant had not been given a reasonable assurance of re-employment in the academic term or year. After due notice was provided, a telephone hearing was held on February 5, 2015. Claimant participated. The employer participated by Ms. Debra Sullivan, Director of Human Resources.

ISSUE:

The issue is whether the claimant had reasonable assurance of continued employment for an educational institution in the next academic school term or year.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Eric Caldwell began employment with Eastern Iowa Community College in August 2008. Mr. Caldwell is employed as a part-time faculty member and is paid by the number of course credit hours that he teaches. Prior to the fall semester of the 2014-15 school year ending on December 16, 2014, Mr. Caldwell was given reasonable assurance of his continuing employment in his regular capacity as a part-time faculty member for the next academic semester that was to begin on January 20, 2015. The claimant had been assigned to teach two classes for the next semester and had accepted the assignment. At the time of hearing, Mr. Caldwell was performing services for Eastern Iowa Community College in his regular capacity as a part-time faculty member.

It is Mr. Caldwell's position that he did not consider that he had had reasonable assurance of continuing employment, because there was a possibility that one or more of the classes assigned to him for the next academic semester might be cancelled.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

The evidence in the record reflects that the claimant did have reasonable assurance of continuing employment for the next semester in the 2014-15 school year. The claimant had been assigned two classes prior to the end of the preceding academic semester and had accepted the Eastern Iowa Community College's offer of continuing class assignments. The evidence in the record also establishes that Mr. Caldwell has continued in his employment with Eastern Iowa Community College resuming his work as a part-time faculty member on January 20, 2015. As a result, the claimant is not considered to be unemployed and is ineligible to receive unemployment insurance benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$1,235.00.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

871 IAC 24.52(6) provides that 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 non-school 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.

Because Mr. Caldwell is not eligible to receive unemployment insurance benefits based upon his part-time employment with this educational institution between academic terms or years, he may, nevertheless, have sufficient non-school wage credits in his claim to qualify him under section 96.4(4). The issue of whether the claimant has sufficient non-school wage credits remaining on his claim to qualify him to receive unemployment insurance benefits is remanded to Iowa Workforce Development for determination as to whether the claimant has been overpaid unemployment insurance benefits.

DECISION:

The representative's decision dated January 5, 2015, reference 01, is reversed. Claimant did have reasonable assurance of returning to work for the following academic year or term. Claimant is ineligible to receive unemployment insurance benefits effective December 14, 2014 that are based on services performed for the educational institution for the period between academic terms or years. The issue of whether the claimant has sufficient non-school wage credits to qualify him to receive benefits under Iowa Code section 96.4(4), or whether the claimant has been overpaid unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs