

**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**

**HATTIE M GRAVES
1215 WREN ROAD
WATERLOO IA 50703**

**WATERLOO COMM SCHOOL DISTRICT
1516 WASHINGTON STREET
WATERLOO IA 50702**

**Appeal Number: 04A-UI-01492-BT
OC: 12/28/03 R: 03
Claimant: Appellant (1)**

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 96.4-5 – Reasonable Assurance

STATEMENT OF THE CASE:

Hattie Graves (claimant) appealed an unemployment insurance decision dated February 6, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she was on a customary vacation or holiday recess with the Waterloo Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 3, 2004. The claimant participated in the hearing. The employer participated through Juliet Dunn, Human Resources Assistant.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time elementary teacher from August 20, 1999 through the present. She has not separated from her full time employer and is still employed at the same hours and wages as anticipated at the time of hire. The claimant has merely taken the customary vacation or recess between successive academic terms.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits and for the following reasons, the administrative law judge concludes it does not.

Iowa Code Section 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.

The claimant is still employed with an educational institution. The claimant was off work for the holiday vacation between academic terms. She had a reasonable assurance of reemployment

in the same capacity for the successive term. The claimant contends she should receive benefits from her former employer, Allied Interstate. However, it is the claimant's separation from her current employer that determines whether or not she is eligible for unemployment insurance benefits. Since she does not qualify to receive benefits based on her separation from her current full-time employer, she is not eligible for benefits at all.

DECISION:

The unemployment insurance decision dated February 6, 2004, reference 01, is affirmed. The claimant is still employed with an educational institution and is not eligible for benefits.

sdb/s