

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH L WILSON**  
Claimant

**APPEAL NO. 11A-UI-10074-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVENPORT COMMUNITY SCH DIST**  
Employer

**OC:06/26/11**  
**Claimant: Appellant (1)**

Section 96.4-5-B – Reasonable Assurance

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated July 28, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 16, 2011, in Davenport, Iowa. Claimant participated. Jody Andrews, Para-educator, was a witness for the claimant. Employer participated by Audrey Strothkamp, Associate Director of Human Resources. The record consists of the testimony of Audrey Strothkamp; the testimony of Kenneth Wilson; the testimony of Jody Andrews; and Employer's Exhibits 1 and 2.

**ISSUE:**

Whether the claimant has reasonable assurance of employment between academic terms.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an educational institution in the state of Iowa. The claimant has been employed as a para-educator at Sudlow Middle School since October 20, 2008. The 2010 academic year ended on May 26, 2011. On May 24, 2011, the claimant received a written notification of reasonable assurance of assignment for the 2011-12 school year. His official notice of assignment was provided in writing on July 15, 2011. The claimant is presently working.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The evidence is uncontroverted that the claimant has been employed by the employer since October 20, 2008, and for every academic year thereafter. On May 24, 2011, prior to the end of the academic year on May 26, 2011, the claimant received written notice of reasonable assurance of employment for the next academic school year, which began in August 2011.

Iowa law is clear that the claimant is not eligible for unemployment insurance benefits for weeks between academic terms because he has reasonable assurance of employment. The claimant does not believe that this law is fair and that para-educators should not be treated differently from other employees who are temporarily laid off. This concern cannot be addressed in this proceeding as the administrative law judge does not have the authority to change a law passed by the Iowa legislature and upheld by the Iowa Supreme Court.

**DECISION:**

The decision of the representative dated July 28, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he is considered to have reasonable assurance of employment between academic terms.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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