

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

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SENTRAL COMMUNITY  
SCHOOL DISTRICT  
PO BOX 109  
FENTON IA 50539

Appeal Number: 04A-UI-06478-H2T  
OC: 05-23-04 R: 02  
Claimant: Respondent (4)

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-5 – Successive Academic Terms

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 2, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on July 8, 2004. The claimant did participate. The employer did participate through Arthur Pixlar, Superintendent of Schools.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a substitute teacher on an as-needed basis beginning November 20, 2003. The claimant was a substitute teacher for a total of ten full days and three half days during the last academic year. The claimant does not have a continuing contract as a teacher with the school district. The claimant does have reasonable assurance that he will be hired again in the next academic year as a substitute teacher, as Mr. Pixlar indicated the school

district would call the claimant again to substitute teach. The claimant's base period is comprised mostly of wages earned from full-time work for a non-educational institution. The majority of the claimant's base period wages are not from on-call work.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is an on-call worker with an educational institution and eligible for benefits between successive academic terms.

Iowa Code Section 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.

871 IAC 24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market...

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The Iowa Administrative Code regulation would normally disqualify an on-call substitute teacher, such as the claimant; however, an exception is made if the claimant has wages in his base period from other than on-call employment with a non-educational institution. Here, the majority of the claimant's wages in his base period are from wages earned for full-time work from an employer other than an educational institution. Thus, the claimant is eligible to draw upon wages earned with other, non-educational employers.

The claimant has reasonable assurance of substitute teaching work during the coming 2004-2005 academic year. He is therefore ineligible to receive benefits under the provision of the above Code Section based on any wages earned with Sentral Community School District.

DECISION:

The June 2, 2004 decision is modified in favor of the appellant. The claimant is not eligible to receive benefits from wages earned with Sentral Community School District. However, he is eligible to receive benefits based on wages from other non-educational employers.

tkh/b