

**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**

**DEETTA J VONK  
400 NE 55<sup>TH</sup> AVE  
DES MOINES IA 50313-1843**

**SAYDEL COMMUNITY SCHOOL  
DISTRICT  
ATTN BUSINESS MANAGER  
5740 NE 14<sup>TH</sup> ST  
DES MOINES IA 50313**

**Appeal Number: 06A-UI-06056-RT  
OC: 05-28-06 R: 02  
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, 4<sup>th</sup> 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 – Benefits Based on Service For an Educational Institution

STATEMENT OF THE CASE:

The claimant, DeEtta J. Vonk, filed a timely appeal from an unemployment insurance decision dated June 6, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on June 28, 2006, with the claimant participating. Merrill C. Knight, Superintendent of Schools, participated in the hearing for the employer, Saydel Community School District. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was and still is employed by the employer as a school bus driver since August 21, 2005. When the claimant began work for the employer she was a substitute bus driver working part time on call but has been offered a regular bus route to begin with the 2006-2007 school year which starts August 23, 2006. The claimant has accepted this position. The claimant has been off work because of the end of the 2005-2006 school year, which ended on May 24, 2006, and during the summer recess between academic years. The employer is certified and licensed as a school district by the state department of education. The claimant performed no academic functions as a bus driver. The employer has done nothing to indicate that the claimant would not be utilized as a bus driver in some fashion in the 2006-2007 school year as she had been in the 2005-2006 school year except that the claimant has now been offered a regular bus route instead of simply being a substitute bus driver and the claimant has accepted the new position. Pursuant to her claim for unemployment insurance benefits filed effective May 28, 2006, the claimant has received no unemployment insurance benefits, records showing that the claimant is disqualified for not being able and available for work. Other than the earnings from the employer herein, the claimant has received the following earnings in her base period: \$444.00 in the first quarter of 2005 from Target, a division of Dayton Hudson; and \$740.00 in the second quarter of 2005 from Target Corporation. Records also show that the claimant has earned \$874.00 from Durham D & M, L.L.C in the first quarter of 2006 which is not in the claimant's base period because it is a "lag" quarter.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is ineligible to receive unemployment insurance benefits because she is still employed by an educational institution but is temporarily off work between two successive academic years or terms and has reasonable assurance that she will be performing the same or similar job functions in the new academic year or term, 2006-2007, that she performed in the prior academic year or term, 2005-2006. The claimant is employed by an educational institution and is temporarily off work between successive academic years or terms and has reasonable assurance and is not otherwise monetarily eligible to receive unemployment insurance benefits based on earnings from other employers and, therefore, the claimant is ineligible to receive unemployment insurance benefits.

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 administrative law judge concludes that there is a preponderance of the evidence that the employer herein, Saydel Community School District is an educational institution. The evidence establishes that the employer is licensed and certified as a public school in the State of Iowa by the state Department of Education. See 871 IAC 24.51(1). The evidence further establishes that the claimant provided services to the employer in the 2005-2006 school year as a substitute bus driver. The evidence further establishes that the claimant is temporarily off work from the employer herein between two academic years or terms. The administrative law judge further concludes that the claimant has reasonable assurance that she will be performing the same or similar functions in the new academic year or term, 2006-2007, that she performed in the prior academic year or term, 2005-2006. Reasonable assurance does not need to be a formal written contract and an implied agreement is sufficient. The administrative law judge notes that here the claimant has been offered a contract, or will be offered a contract, for a regular bus route position in the 2006-2007 school year and the claimant has accepted that position. The administrative law judge concludes that this is reasonable assurance. Accordingly, the administrative law judge is constrained to conclude that the claimant is not eligible to receive unemployment insurance benefits based on earnings from the employer herein because she is still employed by an educational institution and is merely temporarily off work between academic years or terms and has reasonable assurance that she will perform the same or similar services in the new academic year or term as she did in the prior academic year or term.

The claimant does have earnings from other employers in her base period. If sufficient non school wage credits remain on the claimant's unemployment insurance claim to qualify for unemployment insurance benefits, she may be entitled to such benefits if she is otherwise eligible. See 871 IAC 24.52(6). However, the administrative law judge is constrained to conclude that the claimant does not have sufficient non school wage credits to qualify for unemployment insurance benefits. Iowa Workforce Development records demonstrate that the claimant had \$444.00 in earnings in the first quarter of 2005 from Target and \$740.00 in earnings in the second quarter of 2005 from Target but these earnings are not sufficient to establish or determine that the claimant is otherwise monetarily eligible to receive

unemployment insurance benefits. The administrative law judge notes that the claimant has earnings in the amount of \$874.00 in the first quarter of 2006 from Durham D & M L.L.C. but this is not in the claimant's base period, occurring rather in the "lag" quarter. Even if those earnings were utilized to determine the claimant's eligibility for benefits, the claimant's earnings would still be insufficient to establish or determine that she is otherwise eligible to receive unemployment insurance benefits. Accordingly, the administrative law judge concludes that the claimant is ineligible to receive unemployment insurance benefits.

**DECISION:**

The representative's decision of June 6, 2006, reference 01, is affirmed. The claimant, DeEtta J. Vonk, is not entitled to receive unemployment insurance benefits, until, or unless, she demonstrates that she is able, available, and earnestly and actively seeking work, because the claimant is not considered able, available, and earnestly and actively seeking work because she is still employed by an educational institution but is temporarily off work between successive academic years or terms and has reasonable assurance that she will be performing the same or similar functions in the new academic year or term, 2006-2007, that she performed in the prior academic year or term, 2005-2006. Further, the claimant is not otherwise monetarily eligible to receive unemployment insurance benefits based on earnings from non school employers.

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