

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERNADETTE F BERGVIK

Claimant

APPEAL NO. 15A-UI-07376-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINTERSET COMMUNITY SCHOOL DIST

Employer

OC: 12/28/14

Claimant: Appellant (4)

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

Bernadette Bergvik filed a timely appeal from the June 19, 2015, reference 07, decision that denied benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on July 31, 2015. Ms. Bergvik participated. Tammy Ellwanger represented the employer. Exhibits A through E were received into evidence. The administrative law judge took official notice of the Agency's administrative record of quarterly wages that the claimant's base period employers have reported to the Agency.

ISSUES:

Whether the claimant is disqualified for unemployment insurance benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5).

Whether the claimant has non-school base period wages upon which reduced benefits might be based.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Bernadette Bergvik began her employment with the Winterset Community School District in August 2014. Ms. Bergvik started as a substitute bus driver. In February 2015, Ms. Bergvik was promoted to regular route bus driver. Ms. Bergvik last performed work for the employer on June 1, 2015, the last day of the 2014-2015 academic year. Then the District commenced the tradition summer break. The 2015-2016 academic year will start on August 24, 2015. On May 28, 2015, Ms. Bergvik signed a contract with the District, agreeing to return and perform the same or similar duties in the 2015-2016 academic year, with a modest pay increase.

Ms. Bergvik established an original claim for benefits that was effective December 28, 2014. Ms. Bergvik's base period for purposes of that claim year consists of the third and fourth quarters of 2013 and the first and second quarters of 2014. The claim is a combined wage claim that includes substantial base period wages from employment in Connecticut. The Connecticut employment was with First Transit, a transportation company service Yale

University. The employment was not direct employment with Yale University. Ms. Bergvik's base period employers also include Madison County Elderly Services, non-school employment. Winterset Community School District is not a base period employer for purposes of the claim year that began for Ms. Bergvik in December 2014.

Ms. Bergvik established an "additional claim" for benefits that was effective May 31, 2015. The additional claim is based on the claim year that began December 28, 2014.

REASONING AND CONCLUSIONS OF LAW:

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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.

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.

c. With respect to services for an educational institution *in any capacity* under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance

that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "*educational service agency*" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

871 IAC 24.51(1) defines "educational institution" as follows:

Educational institution means public, nonprofit, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

871 IAC 24.51(3)(b) defines "nonprofessional employees" as follows:

Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in instructional, research, or principal administrative capacity.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

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.

871 IAC 24.52(4) provides as follows:

Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph "e."

871 IAC 24.52(6) provides as follows:

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 nonschool 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.

Winterset Community School District is an “educational institution” affected by the between academic terms disqualification provision Iowa Code section 96.4(5)(d). Ms. Bergvik was a non-professional employee of the District during the 2014-2015 academic year and has reasonable assurance of employment in a similar capacity during the 2015-2016 academic year. During the District’s summer break Ms. Bergvik would not be eligible for benefits that are based on wages from the District. However, because the District is not a base period employer, none of the wages that factor into Ms. Bergvik’s current claim year are wages from the District. All of the base period wages are from non-school employment. Effective May 31, 2015, Ms. Bergvik is eligible for benefits provided she is otherwise eligible. The Winterset Community School District will not be assessed for those benefits.

DECISION:

The June 19, 2015, reference 07, is modified as follows. Effective May 31, 2015, the claimant is eligible for benefits provided she is otherwise eligible. The Winterset Community School District is not a base period employer and will not be assessed for those benefits. The between-academic terms disqualification has no impact because the base period wage credits are not based on employment with an academic institution.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css