

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA WOODS
Claimant

APPEAL NO: 07A-UI-06806-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

**OC: 06-10-07 R: 02
Claimant: Appellant (1)**

Section 96.4.5 – Reasonable Assurance
Section 96.4-2 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 2, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 23, 2007. The claimant participated in the hearing. Cathy McKay, Risk Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the claimant is still employed between two successive academic years and whether she is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a full-time bus associate for Des Moines Independent Community School District from August 9, 2005 through the present time. The employer issued a letter to the claimant in May offering her employment during the next academic year. Drivers are allowed to volunteer for summer hours but it is not required. Last summer drivers worked 30 hours per week for six weeks. This summer the employer offered six 30-hour weeks but they were not consecutive weeks and employees were often scheduled two days per week instead of five per week depending on the school district's needs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant does have a reasonable assurance of returning to work the following academic year and is not able and available for work.

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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant was offered a position for the upcoming school year and both parties intend that she will return to drive in the fall. The second issue is whether the claimant is able and available for work. The administrative law judge concludes she is not because she is working the number of hours scheduled for the employer this summer and is not available to work other positions.

DECISION:

The July 2, 2007, reference 01, decision is affirmed. The claimant does have reasonable assurance of returning to work the following academic year and is not able and available for work.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs