

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILL V BENVENUTI
Claimant

APPEAL NO: 12A-UI-08464-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT**
Employer

OC: 06/03/12
Claimant: Appellant (1)

Iowa Code § 96.4(5)b – Reasonable Assurance of Employment Between Academic Years

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 6, 2012 determination (reference 02) that held him ineligible to receive benefits as of June 3, 2012, because he was not eligible to receive benefits for weeks between successive school years. The claimant participated in the hearing. Katherine McKay appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of June 3, 2012.

ISSUES:

Does the claimant work for an educational institution?

Does the claimant have reasonable assurance of returning to work with an educational institution in the 2012-2013 school year?

FINDINGS OF FACT:

The claimant started working for the employer, an educational institution, in October 2004. The employer hired him as a part-time bus driver. On September 15, 2008, the employer promoted the claimant to work as a full-time bus driver. Until the summer of 2010, the claimant worked 12 months a year.

As a result of financial concerns, the employer did not have full-time bus drivers work during the summer months of 2010. Since the summer of 2010, full-time bus drivers have not been scheduled to work during the summer months. If a driver wants to work during the summer months, the driver must bid and be awarded a summer driving position.

On May 22, 2012, the employer sent the claimant a letter assuring him that he had bus driving job for the next school year with the employer. The claimant will begin driving a bus for the employer on August 20, 2012.

The claimant established a claim for benefits during the week of June 3, 2012, or after the 2011-2012 school year ended.

REASONING AND CONCLUSIONS OF LAW:

Wage credits earned in school employment may not be used on an unemployment claim when the claim is filed between school years; the individual performed services in the prior school year and has reasonable assurance of performing services in the coming school year. Iowa Code § 96.4(5)b. The term “reasonable assurance” means a written or implied agreement that the employee will perform services in the same or similar capacity during the upcoming school year.

The facts establish the claimant works for an educational institution and he established his unemployment insurance claim after the 2011-2012 school year ended. The claimant has worked for the employer as a full-time bus driver since 2008. Since the summer of 2010, he has not worked between academic school years or during the summer months. Based on the law, the claimant is not eligible to receive benefits for claims he files between the 2011-2012 and 2012-2013 school years.

The claimant asserted he is a full-time employee and the employer changed the terms of his position without going through the proper negotiations. While I understand the claimant’s argument, this is not an issue that can be addressed by this administrative law judge. This is an issue that must be addressed between the claimant’s union and the employer.

The information the claimant received concerning how wages paid during 12 months for 9 or 9.5 months affect unemployment insurance benefits was correct. 871 IAC 24.52(8) states:

Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a “when earned” basis rather than on a “when paid” basis. Deferred wages currently paid which are based on earnings from a prior period are not deductible on a current week claimed.

The question that was not addressed earlier is whether school employees can receive benefits between academic school years when the claimant performs services in the prior year and has reasonable assurance of returning to work for the school. This is the question that is addressed in this decision.

DECISION:

The representative’s July 6, 2012 determination (reference 02) is affirmed. The claimant, a school employee, is not eligible to receive benefits between the academic school years, because he has worked as a bus driver for the employer in prior school years and since the summer of 2010 has not worked during the summer months and he has a reasonable assurance of working for the employer as a bus driver in the 2012-2013 school year. The claimant is not eligible to receive benefits based on wages credits from the employer from of June 3 through August 18, 2012

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw