

**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**

**JANE M SAUSER
122 – 2ND AVE SW
DYERSVILLE IA 52040**

**OPERATION NEW VIEW
ATTN EXECUTIVE DIRECTOR
1473 CENTRAL AVE
DUBUQUE IA 52001-4853**

**Appeal Number: 05A-UI-01660-DT
OC: 07/04/04 R: 04
Claimant: Respondent (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, 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available
Section 96. 4-5-b – Nonprofit Organization Holiday Period

STATEMENT OF THE CASE:

Operation New View (employer) appealed a representative's February 7, 2005 decision (reference 01) that concluded Jane M. Sauser (claimant) was qualified to receive unemployment insurance benefits for the week ending January 1, 2005. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 15, 2005. The claimant participated in the hearing. Joy Davis appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on September 14, 1998. She works part time (approximately 30 hours per week) as a cook in the employer's Dyersville, Iowa head start center. She remains employed in that position. The employer's head start program is one of various programs the employer, as a community action agency, administers to provide services to low-income persons and families in a three-county area. The employer employs approximately 100 persons, of which approximately 60 are employed in the head start program; of the employer's current 4.5 million dollar budget, approximately 1.7 million is allocated to the head start program. The head start program is administered separate from the school system, although the program schedule roughly follows the school academic year.

The employer's head start program has a regularly scheduled year-end holiday break; in 2004, that break went from December 27 through December 31, 2004. The claimant established an unemployment insurance benefit year effective July 4, 2004. She filed an additional claim effective December 26, 2004. She filed a weekly claim for the week ending January 1, 2005, reported the receipt of vacation pay, and received partial unemployment insurance benefits for the week.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was ineligible for unemployment insurance benefits for the week ending January 1, 2005 as being an employee of an educational institution during a regular holiday period.

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 24.52(7) provides:

(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the

employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

The employer, as a community action program that has the head start program as only one component, is not considered to be an educational institution and, as such, the educational institution ineligibility during a holiday break is not applicable in the present case. The claimant was laid off for lack of work during the holiday season and is eligible to receive benefits.

DECISION:

The representative's February 7, 2005 decision (reference 01) is affirmed. The claimant is eligible for insurance benefits for the week ending January 1, 2005, if she is otherwise qualified.

ld/kjf