employer. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time in town bus driver and a substitute route driver for approximately one year for the 2004-2005 school year. On April 19, 2005, the claimant was sent a letter by the employer, as shown at Employer's Exhibit One, indicating that the employer was going to discontinue the claimant's in-town bus route effective August 2005 as a part of the employer's cost-cutting measures. The letter indicated that the claimant would be allowed to continue to drive buses for the school system supporting other functions such as special education, athletics, and prep-kindergarten. However, this driving would be part time. The driving might become full-time but the employer would not know of this until the 2005-2006 school year. The claimant was then sent a contract as a substitute bus driver as shown at Employer's Exhibit Two. This was sent to the claimant after April 19, 2005 and before August 21, 2005. It was for a part-time bus driver paying $9.25 per hour. The employer's practice is to send out a part-time substitute bus driver contract and then, if the position becomes full-time, to prepare and execute a new contract. The claimant did not sign this contract nor return it to the employer. At a minimum the claimant would have been driving as a part-time substitute bus driver between 15 and 20 hours per week. He would have been paid $9.25 per hour. Under those circumstances the gross weekly wage would be between $138.75 and $185.00. The claimant's average weekly wage for unemployment insurance benefits purposes is $167.39. At least for the purposes of the 2005-2006 school year, the claimant would have been fully licensed and appropriate to drive school buses for the employer. The 2005-2006 school year began August 24, 2005. The employer is a community school district accredited as such by the Iowa State Department of Education. Pursuant to his claim for unemployment insurance benefits filed effective August 21, 2005, the claimant has received unemployment insurance benefits in the amount of $216.00 as follows: $108.00 per week for two weeks, benefit weeks ending August 27, 2005, and September 3, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is disqualified to receive unemployment insurance benefits because he refused to accept suitable work. He is not disqualified for this reason.

2. Whether the claimant is ineligible to receive unemployment insurance benefits because he was still employed by an educational institution between two successive academic years or terms but was off work temporarily between the two academic years or terms and had reasonable assurance that he would be performing the same or similar functions in the 2005-2006 school year as he had in the 2004-2005 school year. The claimant is not ineligible for these reasons.

Iowa Code section 96.5-3-a provides:

> An individual shall be disqualified for benefits:
>
> 3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.
>
> a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:
>
> (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
>
> (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
>
> (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
>
> (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.
>
> However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The administrative law judge concludes that the employer has the burden to prove that the claimant has refused to accept suitable work and should be disqualified as a result. Norland v. Iowa Department of Job Service, 412 N.W.2d 904, 910 (Iowa 1987). The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant either refused to accept suitable work or would be ineligible for benefits as a result. The employer's witness, Rodney Montang, Superintendent of Schools, credibly testified that the claimant's initial position as a full-time in-town bus driver and substitute route driver ended at the end of the 2004-2005 school year. He further credibly testified that at some time between April 19, 2005 and August 21, 2005 the claimant was offered a position with the employer as a substitute bus driver working part-time as shown by

the contract in Employer's Exhibit Two. Mr. Montang testified that the claimant refused this offer. The administrative law judge is constrained to conclude that the offer of work and the claimant's refusal did not occur within the claimant's individual benefit year. The claimant established a benefit year effective August 21, 2005 and the offer of work and refusal occurred prior to that time. Therefore, a disqualification for refusing to accept suitable work cannot be imposed. See 871 IAC 24.24(8). Further, the administrative law judge is constrained to conclude that the offer of work was not suitable. First of all, the claimant had been working full-time driving an in-town bus route and the new offered employment was part-time driving for various functions of the school district. Although the work could have possibly developed into full-time work, the employer could not know that and the claimant therefore did not know that. The administrative law judge concludes that such a change establishes that the work was not suitable for the claimant and his refusal is justified. Further, Mr. Montang credibly testified that the minimum the claimant would work would be between 15 and 20 hours per week or a gross weekly wage of between $138.75 and $185.00. The lower figure is not 100 percent of the claimant's average weekly wage of $167.39 and would not be suitable for that reason. Accordingly, the administrative law judge is constrained to conclude that the employer's offer of work is not suitable and the claimant's refusal therefore was acceptable and further, even if it had been suitable, the claimant could not be disqualified for refusing that work because the offer was not made in the claimant's benefit year. Therefore, the administrative law judge concludes that the claimant is not disqualified to receive unemployment insurance benefits as a result of the refusal to accept suitable work. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

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 the employer is an educational institution. Mr. Montang credibly testified that the employer is a community school district accredited as such by the State Department of Education. Therefore, the employer is an educational institution. See 871 IAC24.51(1). The claimant, at relevant times, was employed by the educational institution or at least had some kind of employment available from the educational institution. The claimant was off work between two successive academic years or terms. The claimant had worked as a full-time bus driver driving an in-town route and acting as a substitute route driver in the 2004-2005 school year. However, the claimant was informed, as shown by the letter from the employer at Employer's Exhibit One, that he would no longer be allowed to work in that position but that he would be allowed to drive buses for the employer supporting other functions. The question really becomes whether this offer was reasonable assurance. The administrative law judge is constrained to conclude that it is not. Reasonable assurance is at least an implied agreement that the employee will perform services "in the same or similar capacity, which is not substantially less in economic terms and conditions…" The administrative law judge is constrained to conclude here that the offer of work from the employer for the 2005-2006 school year was not for the same or similar services or capacity in which the claimant had worked in the 2004-2005 school year. The claimant had been full-time but was not guaranteed full-time employment but was only offered part-time employment. Further, the claimant had been driving a bus for the employer in the in-town route but now would be allowed to drive a bus only to support other functions, and this would probably be part-time or at least the employer could not guarantee that it would be full-time. Therefore, the administrative law judge is constrained to conclude that the claimant did not have reasonable assurance. Accordingly, the administrative law judge concludes that, although the claimant was employed by an educational institution and was off work between academic years or terms, he did not have reasonable assurance that he would be performing the same or similar functions in the new academic year or term, 2005-2006 that he had performed in the prior academic year or term, 2004-2005 and therefore the claimant is not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

DECISION:

The representative's decision of September 14, 2005, reference 01, is affirmed. The claimant, John M. Torkelson, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was off work from an education institution between successive academic years or terms but did not have reasonable assurance that he would be performing

the same or similar functions in the new academic year or term, 2005-2006 that he had performed in the prior academic year or term, 2004-2005, and further, the claimant did not refuse to accept suitable work and, even if he had, he could not be disqualified for such refusal because the offer of work and the claimant's refusal occurred before the claimant had established a benefit year.

kkf/pjs