

DIVISION OF EMPLOYMENT SECURITY  
NC DEPARTMENT OF COMMERCE

**PRECEDENT DECISION NO. 9**

*IN RE DAVIS*

(Adopted February 2, 1984)

FINDINGS OF FACT:

1. The claimant last worked on May 25, 1983 as a substitute teacher for the County Board of Education. There was no further work available for the claimant at that time. From May 22, 1983 until July 2, 1983, the claimant has registered for work and continued to report to an employment office of the Commission and has made a claim for benefits in accordance with G.S. 96-15(a) as of the time the Adjudicator issued a determination. The claimant appealed the Adjudicator's determination, and an evidentiary hearing was held by Pat Barnes, Appeals Referee, under Docket No. IV-UI-93821, who held that the claimant was ineligible to receive unemployment benefits. The claimant filed a timely appeal to the Commission.
2. The claimant worked as a teacher for this employing unit until 1977. From 1977 until June of 1982, the claimant performed services for a college.
3. From November of 1982 until May of 1983, the claimant worked as a substitute teacher for both the County Board of Education and a private school. The claimant performed duties as a substitute teacher for one to six days for the County Board of Education. The claimant performed duties as a substitute teacher for the private school for one to six days during the school year of 1982-83.
4. The claimant's status as a substitute teacher with the private school is unknown.
5. The claimant's status with the County Board of Education is active. The claimant's name currently appears on a list of approved teachers for the 1983-84 school year. It is unknown whether or not the claimant will be called upon to provide substitute teaching services at this time. The claimant's chances for

obtaining such employment are the same as many other individuals whose names appeared on such approved list. Those individuals will be called upon if and when they are needed to provide services as substitute teachers.

6. The claimant filed a new initial claim in January of 1983. He filed his additional initial claim effective May 22, 1983.

#### MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3).

The law further provides that the payment of benefits to any individual based on services for secondary schools, or subdivisions of said secondary schools, subject to this chapter, or administered under the provisions of this chapter, shall be in the same manner and under the same conditions of the law of the chapter as applied to individuals whose benefit rights are based on other services subject to this chapter.

The law further provides that any employee of a secondary school system shall be considered available for work during any week such individual is on vacation between successive academic years only if the individual does not have a contract, written, oral, or implied, or a reasonable assurance to perform services in any capacity for the secondary school system for both such academic years. The provisions of this subsection relating to the denial of benefits apply to individuals who perform services on a part-time or substitute basis. G.S. 96-13(b)(2).

Based upon the foregoing facts, it is concluded that the claimant did provide substitute teaching services during the 1982-83 school year for the County Board of Education and a private college. Such services were limited to no more than twelve days during the 1982-83 school year.

The claimant is on an approved list of substitute teachers to perform duties as a substitute teacher for the 1983-84 school year. The claimant is subject to be called if and when work is available during the 1983-84 school year.

The claimant last worked for the County Board of Education. While the claimant may or may not be eligible for benefits during the academic year, the claimant is clearly not eligible for benefits during the summer vacation period. The law is specific, and no exceptions are provided.

Consequently, the claimant is not available for work within the meaning of the law during the week beginning May 22, 1983. The claimant is, therefore, not eligible to receive benefits for those weeks.

DECISION:

The claimant is not eligible to receive unemployment benefits for the week beginning May 22, 1983.