IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER N STONEMAN
Claimant

TRI COUNTY CHILD & FAMILY DEVELOPMENET CNCL INC HEAD START
Employer

APPEAL NO: 09A-UI-11130-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/14/09
Claimant: Respondent (2)

Section 96.4-5 – Between Terms Denial
871 IAC 24.52(7)(a) – Head Start Programs and Between Terms Denial
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tri County Child & Family Development Council, Inc. Head Start (employer) appealed a representative's July 23, 2009 decision (reference 01) that concluded Jennifer N. Stoneman (claimant) was qualified to receive benefits because she was on a short-term layoff. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 20, 2009. The claimant responded to the hearing notice, but was not available for the hearing. Terry Parsons, attorney at law, represented the employer. Jamie Moore, the human resource director, appeared on the employer's behalf. Based on the administrative record, 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.

ISSUES:

Does the claimant have reasonable assurance of returning to work for Head Start Program that is covered under the law that does not permit an employee to receive unemployment insurance benefits during successive academic years?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The employer is an agency that operates programs that provide educational training for pre-school aged children. The employer operates primarily in the Waterloo area. The employer's Head Start program is licensed by the Iowa Department of Human Services as a licensed childcare center and preschool. The employer receives federal funds. The employer is not a Community Action Agency or Program.
The employer operates its program in a classroom setting and it has several locations in school buildings. The employer's Head Start centers are open during periods that are similar to a school year.

The claimant has worked for the employer as a family worker since August 11, 2008. The claimant's last day of work for employer in the 2008-2009 school year was June 5, 2009. The claimant is a union employee. She signed a statement of intent to continue employment for the 2009-2010 school years on April 17, 2009. The claimant had returned to work on or before August 20, 2009.

The claimant established a new claim for unemployment insurance benefits with an effective date of June 14, 2009. Her benefits are all based on the services performed for the employer. The claimant filed claims for the weeks ending June 20 through August 8, 2009. She received her maximum weekly benefits amount of $250.00 for each of these weeks. She also received an additional $25.00 each week from the government's economic stimulus program.

REASONING AND CONCLUSIONS OF LAW:

The Federal Unemployment Tax Act (FUTA), 26 U.S. C. § 3301 et seq., enacted originally as Title IX of the Social Security Act in 1935, creates a cooperative federal-state program of unemployment compensation (UC) to unemployed workers. FUTA allows states discretion in setting up their unemployment insurance system but also establishes certain minimum federal standards that a state must satisfy in order for employers in a state to receive credit against their Federal unemployment tax. See 26 U.S.C. §3304(a). The standard at issue in this case, §3304(a)(6)(A), FUTA, requires that unemployment compensation not be paid based on certain educational services between and within school years or terms under certain conditions.
This section is the product of the "Unemployment Compensation Amendments of 1976" (Public Law 94-566). Its major mandates are: (1) coverage of employees of state and local governments and their instrumentalities and nonprofit organizations; (2) equal treatment in the payment of UC to employees of such entities (equal treatment provision); and as an exception to the equal treatment provision, (3) denial of UC based on certain educational services performed for such entities between and within academic terms (between-terms denial provision). The between-terms denial provision in its current form sets forth required and optional denial provisions in (i) through (vi) of § 3304(a)(6)(A), FUTA (clauses (iv) and (v) were added in 1983). The six clauses are described below:

- Clause (i) requires, unless the specified conditions are met, the denial of UC between two successive academic years or terms based on instructional, research, and principal administrative services performed for an educational institution.
- Clause (ii) permits, under specified conditions, the denial of UC between years or terms based on all other (i.e., "nonprofessional") services performed for an educational institution, and retroactive payment based on those services, if no work is available in the second term.
- Clause (iii) requires the within terms denial of benefits during an established and customary vacation period or holiday recess based on all services performed for an educational institution.
- Clause (iv) requires the between and within terms denial of benefits based on all services performed in an educational institution while in the employ of an educational service agency (ESA).
- Clause (v) permits the State to implement the denial provisions of (i) through (iv) for services performed by governmental entities or nonprofit organizations if such services are provided to or on behalf of an educational institution.
- Clause (vi) permits the State to make the between and within terms denial provisions of clauses (iii) and (iv) optional based on the "nonprofessional" services described in clause (ii).

Unemployment Insurance Program Letter No. 41-97, Application of Between and Within Terms Denial to Head Start Program Personnel (U.S. Department Of Labor (DOL), September 30, 1997).

This background is essential to understanding the source of Iowa's between-terms denial. Iowa responded to the provisions of § 3304(a)(6)(A), FUTA by enacting Iowa Code section 96.4-5, which explicitly adopts the equal treatment provision and in subsections a, b, c, and d enacts all of the required and optional clauses of § 3304(a)(6)(A), FUTA.

Iowa Code section 96.4-5-a and b, therefore, provide that benefits based on service "in an education 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 corporation" shall not be paid between academic years or terms if the employee worked in one academic year or term and has reasonable assurance of reemployment in the next year or term. This denial applies to services performed under subsection (a) in an instructional, research, or administrative capacity and under subsection (b) in any other capacity.

To assist the states in implementing the Unemployment Compensation Amendments of 1976, the DOL, Employment and Training Administration (ETA), issued Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976--P.L. 94-566 (August 26, 1977) (Draft Language and Commentary). In addition, the ETA interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs). The issue of the application of the between-terms denial to Head Start employees has been addressed in the Draft Language and Commentary and subsequent UIPLs. The most recent UIPL that addresses the issue, UIPL 41-97 (cited above) reviews the DOL position in the Draft Language and Commentary and subsequent UIPLs on the subject and concludes:

> Whether Head Start agencies are "educational institutions" was discussed in UIPL 40-79. That UIPL stated that Head Start programs operated by Community Action Groups do not meet the criteria of "educational institutions," and the between and within terms denial does not, therefore, apply to services performed for such groups. UIPL 40-79 stated, however, that when a local board of education operates a Head Start program as an integral part of the school system in facilities of an educational institution, with Head Start workers as employees of the board and the schools in every respect, subject to all employing policies, such as hiring, firing, working conditions, as other employees performing services for the educational institution, then such workers are considered to be employed by an educational institution. As such, these workers are subject to the denial provisions in the same manner as are all other educational institution employees. This remains the Department's position.

UIPL 41-97 next interprets clause (iv) set forth above and concludes that Head Start programs do not meet the definition of an ESA because they are not government entities operated exclusively to provide services to education institutions. Finally, in interpreting clause (v) set forth above, UIPL 41-97 concludes that whether services are "provided to or performed on behalf" of an educational institution depends on the facts of each individual case. If State law contains a provision implementing optional clause (v), a case-by-case determination must be made to determine if Head Start services are "provided to or on behalf of an educational institution."

The Iowa Workforce Development Department (IWD): (1) has authority in Iowa Code section 96.11-1 to adopt such rules as a deemed necessary to administer chapter 96, and (2) has an obligation in § 96.11-10 to cooperate with the United States Department of Labor and to take such action, through the adoption of appropriate rules to secure to the state and its citizens all the advantages provided by the federal act. Unquestionably, IWD promulgated 871 IAC 24.52(7) under the obligation stated in § 96.11-10 to adopt the DOL position regarding the application of the between-terms denial to Head Start employees employed by a community action agency. The rule 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. (Emphasis added).

The facts establish the employer is not a community action agency. The employer is devoted to educating students as its primary function. The employer established that it provides educational services "to or on behalf of an educational institution." Iowa Code section 96.4-5-a and b. The evidence further shows that the employer has cooperative arrangements with some school districts to lease space for Head Start centers. The facts establish the employer meets the requirements of 871 IAC 24.52(7). Therefore, the claimant is not eligible to receive benefits between academic school years. This means the claimant is not eligible to receive benefits for the weeks ending June 20 through August 8, 2009.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. Even though the claimant is not at fault in the receiving the overpayment, she has been overpaid a total of $2,200.00 in benefits she received for the weeks ending June 20 through August 8, 2009.

DECISION:

The representative's July 23, 2009 decision (reference 01) is reversed. The claimant is not eligible to receive benefits for the weeks ending June 20 through August 8, 2009, because she worked for an educational institution, has reasonable assurance of returning to work when

classes resume and was between academic school years during these weeks. The claimant has been overpaid and must repay a total of $2,200.00 in benefits she received for the above weeks.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs