

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY A GORMAN
Claimant

APPEAL NO. 08A-UI-09115-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

OC: 06/08/08 R: 04
Claimant: Respondent (2-R)

Section 96.4(5)a – School Employment
Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Hillcrest Family Services (Hillcrest) filed an appeal from a representative's decision dated October 2, 2008, reference 03, which held that no disqualification would be imposed regarding Jody Gorman's separation from employment. After due notice was issued, a hearing was held by telephone on October 23, 2008. Ms. Gorman participated personally. The employer participated by Julie Heiderscheit, Vice President for Human Resources. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Gorman may use wages earned in school employment to establish a claim for job insurance benefits. There is also the issue of whether she was separated from employment on August 13, 2008 for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Gorman began working for Hillcrest on August 15, 2007 as a youth worker. In October or November of 2007, she became a full-time teacher associate. Hillcrest operates an on-campus school for students in grades 2 through 12. Some of the students are from the employer's residential facility operated for youths with behavioral problems. The Dubuque Community School District also places in Hillcrest students with learning difficulties who need a more structured learning environment. Hillcrest also provides teachers and teacher assistants to schools in other districts for students with individualized educational needs. Hillcrest is reimbursed by the Dubuque Community School District for the cost of providing services to its students. Other school districts likewise reimburse Hillcrest for operating expenses. The agreements between Hillcrest and the various school districts are pursuant to Iowa Code section 28E.4.

Students attending Hillcrest receive school credits towards graduation to the same extent as they would have received in their home school. Students who graduate from Hillcrest are given

a diploma from their home school. Teachers performing services for Hillcrest must have the same credentials as those teaching in traditional public schools.

Ms. Gorman worked pursuant to a written contract that expired with the end of the school year on June 4, 2008. She began a medical leave of absence on May 20, 2008. On June 2, she was mailed an offer of work for the 2008-2009 school year. Her job, conditions of employment, and benefits were to be the same as in the prior school year. Her wage was to increase by three percent. Ms. Gorman signed the agreement on June 9. In July, she was released to return to work without restrictions. She notified the employer on August 13 that she would not be returning on August 18 to begin the new school year. She confirmed this with the employer on August 19.

Ms. Gorman had suffered a ruptured disc in November of 2007. Her work as a teacher associate sometimes called for her to restrain children in her care. She feared reinjuring her back and, therefore, chose not to return to Hillcrest. She last saw a medical doctor in March of 2008. She was not advised by a doctor to quit the employment.

Ms. Gorman filed a claim for job insurance benefits effective June 8, 2008. She has received a total of \$1,400.00 in benefits since filing the claim. A portion of the benefits received have already been assessed as an overpayment.

REASONING AND CONCLUSIONS OF LAW:

When a claim for benefits is filed between academic years, wages earned in school employment may not be used on the claim if an individual performed services in the prior academic year and has reasonable assurance of employment in the upcoming academic year. Iowa Code section 96.4(5)a. The administrative law judge must first determine if Hillcrest is an “educational institution” within the meaning of the statute. An “educational institution” is a public, non-profit, private, or parochial school in which students are offered an organized course of study designed to impart knowledge by a teacher. See 871 IAC 24.51(1). Hillcrest operates basically as an extension of the various school districts for which it provides services. The cooperative arrangement is authorized by section 28E.4. The services are paid for by the various school districts for which services are provided. The academic coursework of Hillcrest students receives the same credit as that of students in traditional schools. Coursework at Hillcrest satisfies state-imposed requirements for graduation. Hillcrest’s teachers must have credentials to the same extent as teachers in traditional schools.

Given the interrelationship between the employer and the various school districts, the administrative law judge concludes that, for the purpose of Ms. Gorman’s claim, Hillcrest is an educational institution within the meaning of the law. It is undisputed that Ms. Gorman performed services for Hillcrest during the 2007-2008 academic year. It is also undisputed that she had reasonable assurance of continued employment during the 2008-2009 academic year. The reasonable assurance was in the form of the employer’s letter to Ms. Gorman on June 2. For the above reasons, the administrative law judge concludes that wage credits earned with Hillcrest may not be used on Ms. Gorman’s claim filed effective June 8, 2008, between academic terms. This matter shall be remanded to Claims to determine if she has sufficient other base period wage credits on which to establish a valid claim.

Ms. Gorman has now voluntarily quit the employment. She gave notice on August 13 that she would not be returning. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Gorman quit because she did not want to aggravate a previous

back injury. However, her doctor had released her to return to work without restrictions. Given this factor, the administrative law judge cannot conclude that remaining in the employment posed a serious risk to Ms. Gorman's health. Moreover, she did not make a good-faith effort to have the employer accommodate her back condition by not requiring her to participate in restraining students. The evidence failed to establish to the satisfaction of the administrative law judge that Ms. Gorman had good cause attributable to the employer for quitting. Therefore, the separation was a disqualifying event.

Ms. Gorman has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Gorman will be required to repay benefits already received.

DECISION:

The representative's decision dated October 2, 2008, reference 03, is hereby reversed. Ms. Gorman may not use wage credits earned in school employment as she had reasonable assurance of continued employment. She voluntarily quit the employment on August 13, 2008 for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine if Ms. Gorman has sufficient other wage credits on which to base a valid claim. The matter is also remanded to determine the amount of any overpayment and whether Ms. Gorman will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css