

**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**

**SARA J TIMMERMAN
335 KLINGENBERG TER
DUBUQUE IA 52001-4433**

**HILLCREST FAMILY SERVICES
2005 ASBURY RD
DUBUQUE IA 52001-3042**

**Appeal Number: 06A-UI-07233-DWT
OC: 12/25/05 R: 12
Claimant: Respondent (4)**

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 are 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 96.4-5 - Between-Terms Denial

STATEMENT OF THE CASE:

The employer appealed a representative's July 7, 2006 decision (reference 04) that concluded Sara J. Timmerman (claimant) was on a short-term layoff and eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 3, 2006. The claimant responded to the hearing notice, but her phone rang busy for over ten minutes. The administrative law judge was unable to contact the claimant for the hearing. The claimant did not call the Appeals Section when she did not receive a call to participate in the hearing. Julie Heiderscheit, the employer's director of human resources, and Mary Jo Pancratz appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were admitted into evidence. Judicial notice was taken regarding the Employment Appeal Board's decision for 06B-UI-01205. Based on the evidence, the arguments of the employer and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Is the claimant on a short-term layoff or is the claimant between academic terms for an educational facility?

FINDINGS OF FACT:

The employer is a private, non-profit social service agency in Dubuque, Iowa. The employer has several different programs providing services to adults and children including counseling, foster care, adoption and residential facilities for adults and children with mental and emotional problems. One component of the employer's services is a kindergarten through 12th grade (K-12) school located on the grounds of its organization's campus in Dubuque, Iowa (called the on-campus school), and satellite classrooms in other communities in northeastern Iowa. The school and classrooms are for students with behavioral problems that prevent them from being successful in a traditional classroom. About 20 percent of the personnel and 20 percent of the budget of the employer are devoted to the educational program operated by the employer.

Students who participate in the on-campus school are either students who have been placed in the employer's residential facilities or students who have been transferred from their home school to the on-campus school because of behavioral problems. The Dubuque School District and the employer have entered into a 28E Agreement, with the employer providing educational services and the Dubuque School District providing funding, administrative services, and educational accountability for the program. The employer's on-campus school is not accredited as a school by the department of education or any other government agency. The employer develops the curriculum in consultation with the Dubuque School District. Teachers are required to have college degrees and teaching certificates to teach for the employer. Teacher associates have the same requirements as a teacher associate with the Dubuque School District. Teacher associates are not required to have any certification and the education required is a high school diploma.

Under the 28E Agreement, the employer is reimbursed by the Dubuque School District for the educational services it provides to students from the Dubuque School District. The students remain registered with the Dubuque School District and the credits earned are with the Dubuque School District. For students in the on-campus school or satellite classrooms who are not residents of the Dubuque School District, the financial arrangement is that the Dubuque School District reimburses the employer for education services provided to these students and then bills the home school district. Nonresident students remain registered with their home school district and earn credits in their home school district. For example, a student who successfully completes the 12th grade in the employer's on-campus school who is from Cedar Rapids will receive his diploma from his home school in Cedar Rapids.

The claimant began working for the employer as a teacher associate on September 19, 2005. The claimant entered into a contract to work for the employer until the end for the 2005-2006 school year or until June 1, 2006. (Employer Exhibit One.) On June 1, 2006, the employer offered the claimant a contract, which assured the claimant she would be employed as a teacher associate in the 2006-2007 school year. (Employer Exhibit Two.)

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 25, 2005. Her benefits are all based on the wages credits she earned while performing services for other employers who are not educational institutions. The claimant reopened her claim during the week of June 4, 2006. The claimant filed for and received a total

of \$1,673.00 in unemployment insurance benefits for the weeks between June 10 and July 29, 2006.

The claimant and employer have previously addressed the same issue as in this case in a hearing before another administrative law judge in late February 2006. The employer appealed that administrative law judge's decision and the Employment Appeal Board clearly stated in an April 26, 2006 decision that Iowa Code § 96.4-5 applies in this case.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.4-5 provides 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.

Since the Employment Appeal Board's April 26, 2006 decision, 06B-UI-01205, addressed the same issue that prompted this appeal when the claimant reopened her claim during the week of June 4, the representative had no legal authority to issue the July 7, 2006 decision indicating the claimant was on a temporary layoff which is contrary to the Employment Appeal Board's April 26, 2006 decision.

Just as when the claimant filed a claim during the winter break, the claimant is again between terms, but the employer is not a base period employer. As a result, the claimant's benefits are based on wage credits from other non-educational employers. Based on these other wage credits, the claimant is eligible to receive benefits between academic school years. (If the employer was a base period employer, wage credits the claimant earned from the employer could not be used to determine if she were monetarily eligible to receive benefits.)

DECISION:

The unemployment insurance decision dated July 7, 2006, reference 04, is modified in the employer's favor. First, based on the Employment Appeal Board's 06B-UI-01205 decision, the representative had no legal authority to issue a decision that was contrary to this decision when the parties and issues were the same and in the same benefit year. Iowa Code § 96.4-5 applies to the claimant and the employer. Since the employer is not a base period employer and the claimant has wage credits from other non-educational employers, the claimant is monetarily eligible to receive benefits as of June 4, 2006, provided she meets all other eligibility requirements. The employer's account is not subject to any charges during the claimant's current benefit year.

dlw/cs