BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DEBORAH J BASTEN	:	
	:	**HEARING NUMBER:** 16B-UI-07680
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
HILLCREST FAMILY SERVICES	:	
Employer		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-5

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Deborah Basten (Claimant) has worked full-time for Hillcrest Family Services (Employer) since September 6, 2001. During the school years the Claimant worked as a teacher associate on assignment to Dubuque Community Schools pursuant to a 28E contract between the Employer and the School District. During every summer of her employ, until this year, the Claimant worked for Hillcrest in some full-time capacity other than on assignment to the School District as a teach associate. In 2016 the Claimant's employment as a teacher associate ended at the end of the school year, as usual. On June 6, 2016 the Claimant was given reasonable assurance of employment in the next school year as a teacher associate on assignment to the School District. The Claimant applied for summer work with Hillcrest but was not hired. She did not work for Hillcrest during the summer of 2016 as she had in every previous year she was an employee of Hillcrest.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the Claimant was between successive terms with an educational institution, or with a nonprofit organization providing services to such an institution, and therefore not entitled to receive unemployment insurance benefits based on credits earned at the Employer. For the following reasons the Board concludes the Claimant is entitled to unemployment insurance benefits based on service to the Employer as the between the terms denial does not apply to the Claimant who was a 12-month employee.

Iowa Code section 96.4-5-a provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> a. 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:
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> b. Benefits based on service in an instructional, research, or principal administrative capacity in 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 during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

The Code specifically gives alternative criteria for the between term denial to apply: (1) the Claimant's benefits are "based on service in … an instructional, research, or principal administrative capacity in an educational institution" Iowa Code §96.4(5)"a" **or** (2) the Claimant's benefits are "based on [such] service … 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." *Id.* In other words, the denial would apply if the Claimant worked for the School District, but it also applied if the Claimant does the School District's work while paid by the Employer. Here it is clear that Hillcrest is not an educational institution, but it is equally clear that the Claimant's service was "provided to or on behalf of" an educational institution while in the employ of a nonprofit organization. Thus the between terms denial provision does apply to workers at the Employer who provide services to the Dubuque schools under the 28E agreement. But this does not mean it operates to deny benefits to all workers during the period between academic years.

The rules of the Department state:

> 871 IAC 24.51(7) School duration period…c. Twelve-month employment. School employees that perform services for educational institutions 12 months of a calendar year or years.
> …
> 871 IAC 24.52(5) Twelve-month, year-round employee. An educational institution employee who performs services on a 12-month, year-round basis whose employment is terminated through layoff or reduction in force prior to the completion of the 12-month period, is eligible for benefits and shall not be disqualified under the provisions of Iowa Code section 96.4(5). An offer of reemployment to the 12-month, year-round employee for the succeeding academic year or term shall be adjudicated under Iowa Code section 96.5(3), regarding offers of suitable work and no disqualification may be imposed prior to the week in which the employment is scheduled to commence.

Here, and throughout the rules, the reference to an "educational institution employee" and to service performed at an educational institution includes those who work for nonprofits, which are not themselves educational institutions, when that work is performed on behalf of an educational institution. Were the meaning otherwise the between term denial would not even apply to this Claimant in the first place. We thus find that the Claimant is an educational institution employee who performs services on a 12-month year-round basis. True she does not perform 12 months of work at the educational institution, but she does have an *established pattern* of working for this Employer year round. Where a Claimant has such an established pattern of year round work for a nonprofit, even if some of the work is not on assignment to an educational institution, then that worker is a twelve-month employee for the purposes of rule 24.52(5). We note that next year, since this Claimant did not work this summer, the Claimant may very well not be considered a 12-month worker. But this year she is.

The Claimant is thus a year-round worker for the Employer "whose employment is terminated through layoff …prior to the completion of the 12-month period," that is, over the summer break when she was not hired for summer work. In such a case, during this layoff the Claimant "is eligible for benefits and shall not be disqualified under the provisions of Iowa Code section 96.4(5)." We thus hold that since this Claimant has an established pattern of year round work for the Employer then the between terms denial of 96.4(5) does not bar benefits to the Claimant.

DECISION:

The administrative law judge's decision dated August 9, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not ineligible as a result of the "within and between academic terms or years" provision of Iowa Code §96.4(5). Accordingly, the Claimant is allowed benefits which can be based on wage credits earned at the Employer, provided the Claimant is otherwise eligible. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge's decision in this case is vacated and set aside.

Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the

additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Claimant was not presented at hearing. Accordingly none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

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Kim D. Schmett

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James M. Strohman

DISSENTING OPINION OF ASHLEY R. KOOPMANS:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge on the ground that the Claimant is instructional personnel who had reasonable assurance, and who picked up summer work during the summer like many other teachers. The fact that the work was also from Hillcrest does not change the fact that the Claimant was not working during the summer only because summer is the customary break for instructional personnel.

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Ashley R. Koopmans

RRA/fnv