

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLEEN K MEISSNER
Claimant

APPEAL NO. 10A-UI-12783-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

OC: 06/13/10
Claimant: Respondent (1)

871 IAC 24.1(113)a – Separations
Section 96.4(5) – Reasonable Assurance of Employment Between Academic Terms

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated September 2, 2010, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 25, 2010. The claimant participated. Although the employer provided a telephone number at which a representative could be reached, when the administrative law judge dialed that number, voice mail picked up. A detailed message was left on how to participate in the hearing. The employer did not call until after the hearing was completed. The record consists of the testimony of Coleen Meissner. Official notice is taken of agency records and exhibits sent in by the employer (Exhibits 1 through 7).

ISSUE:

Whether the claimant was separated from her employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a social service agency that is affiliated with the Iowa Conference of the United Methodist Church and the Synod of Lakes and Prairies, Presbyterian Church (USA). On August 13, 2009, the claimant signed a contract to be a special education teacher for Hillcrest Family Services. The employer has what is known as a 28E agreement with the Dubuque Community School District. The claimant's contract commenced on August 17, 2009 and included 190 days of service. The claimant elected to be paid in installments over a period of 26 pay periods rather than during the actual school calendar.

On April 22, 2010, the employer sent the following letter to the claimant:

We are rapidly coming to the close of the 2009-2010 school year. This letter is to inform you that your teaching contract at this time will not be renewed for the 2010-2011 school year due to anticipated students for the 2010-2011 school year.

(Exhibit 3)

After receiving this letter, the claimant attempted to find another teaching job. She was able to find a job with the Independence School District on August 18, 2010.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

The Employment Appeal Board has ruled that Iowa Code section 96.4-5 applies to the 28E agreement between the Dubuque Community School District and Hillcrest Family Services. (06B-UI-01205). Iowa Code section 96.4-5 states that if an employee of an educational institution has reasonable assurance of employment for the next academic term, then the employee is not eligible for unemployment insurance benefits between academic terms.

In this case, the evidence is uncontroverted that the claimant did not have reasonable assurance of employment with Hillcrest Family Services for the next academic year. She was sent a letter on April 22, 2010, that her teaching contract would not be renewed. The claimant testified that she was "pink slipped" and began looking for another job. The employer cannot claim, therefore, that the claimant is ineligible for unemployment insurance benefits based on

reasonable assurance, since the employer had told the claimant her contract would not be renewed. The fact that the claimant elected to be paid her 190 days of service over 12 months rather than during the actual academic year does not change the result.

DECISION:

The representative's decision dated September 2, 2010, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw