

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON K LIVELY
Claimant

APPEAL NO. 09A-UI-01473-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**OC: 12/28/08 R: 04
Claimant: Respondent (2R)**

Section 96.4-5 – Reasonable Assurance

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 28, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 18, 2009. Employer participated by Shannon Hagensten, Recruitment and Retentions Specialist. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: claimant was employed as a Teacher Associate for the Dubuque Community School District on contract with Hillcrest Family Services, during the 2008 – 2009 school year. Claimant provided educational services to children that could not function within the traditional school system. All of claimant's work was the direct result of a contract with the Dubuque Community School District. The organization, Hillcrest Family Services, as a whole devotes about 100 of the total 416 employees to educational services for various school districts in a four county area. Employer offered reasonable assurance of work for the next academic year by contract. Claimant was on Christmas break between semesters December 22, 2008 through January 4, 2009. Claimant filed for unemployment while off on Christmas break. Claimant did return to work after the Christmas break.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-5-b provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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:

b. Benefits based on service in any other capacity for 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 terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

871 IAC 24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

The claimant did have reasonable assurance of continued employment for the 2008-2009 school year. As a result, the claimant is considered employed by a school between successive terms with reasonable assurance of work after the break. Benefits shall be withheld.

DECISION:

The decision of the representative dated January 28, 2009, reference 01, is reversed and remanded for determination of overpayment. Claimant is not eligible to receive unemployment insurance benefits.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs