

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

PAULA J ROGAN
5106 ELEANOR LN
ZWINGLE IA 52079-9633

HILLCREST FAMILY SERVICES
2005 ASBURY RD
DUBUQUE IA 52201-3042

Appeal Number: 06A-UI-07757-DWT
OC: 06/04/06 R: 04
Claimant: Respondent (2/R)

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 is 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 – Denial – Between Academic Terms

STATEMENT OF THE CASE:

Hillcrest Family Services (employer) appealed a representative's July 7, 2006 decision (reference 01) that concluded Paula J. Rogan (employer) was eligible to receive unemployment insurance benefits because she was on a short-term layoff and was 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 18, 2006. The claimant participated in a consolidated hearing with two other claimants. See decisions for appeals 06A-UI-07755-DWT and 06A-UI-07756-DWT. Julie Heiderscheit and Mary Jo Pancratz appeared on the employer's behalf. Based on the evidence, the arguments of the parties and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Is the claimant eligible to receive unemployment insurance when the employer's on-campus school is not in session during the summer months?

FINDINGS OF FACT:

The employer is a private, non-profit social service agency in Dubuque, Iowa. The employer has programs providing services to adults and children, including residential facilities for 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 the employer's campus in Dubuque, Iowa (called the on-campus school). The school and classrooms are for students with behavioral problems that prevent them from being successful in a traditional classroom. About 15 percent of the employer's budget is 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 what is termed 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. 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 100 percent for the educational services it provides to students from the Dubuque School District. The claimant's paycheck indicates the employer pays her salary. The employer submits a quarterly bill to the Dubuque School, which includes the cost of teacher associates' salaries and benefits. 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, 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.

On September 9, 2003, the claimant began working for the employer as a full-time teacher's associate in an on-campus classroom. The claimant has worked as a teacher's associate for the employer since the 2003-2004 school year. Most recently the claimant entered into a contract for the 2005-2006 school year and worked as a teacher's associate from mid-August 2005 to early June 2006. In early June 2006, the employer sent the claimant a letter of assignment indicating the employer wanted the claimant to again work as a teacher associate during the 2006-2007 school year. The claimant recently received a contract for the 2006-2007 school year. Although the employer has not received a signed contract from the claimant, she intends to return to work as a teacher's associate for the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.4-5-a and b provide 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.

Iowa Code § 96.19-14 defines an "educational institution" as an entity: (1) in which students are offered an organized course of study or training designed to transfer to them knowledge or skills through an instructor or teacher; (2) which is approved, licensed or issued a permit to operate as a school by the department of education or other authorized government agency; and (3) which offers a course of study or training that may be academic, technical, trade or preparation for gainful employment.

The employer provides educational services under a 28E Agreement. This refers to Iowa Code chapter 28E, which allows a public agency, including a local school district, to enter into an agreement with a private agency for joint or co-operative actions. Iowa Code § 28E.4. In this case, chapter 28E allows the Dubuque School District to share its educational authority with the employer by entering into a 28E Agreement.

The employer is not an educational institution for two reasons. First, although the employer satisfies conditions (1) and (3) of Iowa Code § 96.19-14 set forth above, it does not satisfy (2) because it is not accredited as a school by the department of education or any other authorized government agency. This is true even though it operates under the Dubuque School District's educational authority. Second, the unemployment insurance rules provide that a nonprofit organization that has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. 871 IAC 24.52(7)a. The employer in this case, as a whole, is a social services agency whose primary function is not the education of students. The employer also is not an “educational service agency,” because it is not a government agency or government entity established and operated exclusively for the purpose of providing educational services to educational institutions. Iowa Code § 96.4-5-d.

The final question is whether the claimant's benefits are based on services “provided to or on behalf of an educational institution” while in the employ of a nonprofit organization as set forth in Iowa Code § 96.4-5-a and b. The DOL Employment and Training Administration (ETA), interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs). UIPL No. 41-83, contains the instructions to the states on implementing the Social Security Amendments of 1983, which added the “provided to or on behalf of” language to the between-terms denial provisions of § 3304(a)(6)(A), FUTA. As a result, UIPL No. 41-83 provides persuasive authority on this question. UIPL No. 41-83 (Attachment I) states the words "provided to" require only that the services provided to the educational institution give some benefit or support to the institution, while the words "on behalf of" apply to services performed by employees of a governmental entity or nonprofit organization as an agent or representative of an educational institution.

The facts are clear that under the 28E Agreement, the claimant was in the employ of a nonprofit organization providing services "to or on behalf of" the Dubuque School District or the local school districts where the students maintained their school residence. The employer is acting as an educational agent providing educational services to the students in place of their local schools.

The administrative law judge realizes this decision conflicts with a decision the claimant received on July 29, 2005 that another administrative law judge issued. See decision for appeal 05A-UI-06892-RT. The decision issued on July 29, 2005 is the final decision for the claimant's previous benefit year because neither party appealed that decision. However, since that decision was issued in late July 2005, the Employment Appeal Board has issued a decision concerning the same factual situation. On April 26, 2006, the Employment Appeal Board reversed a decision made by the same administrative law judge (R) and held that Iowa Code § 96.4-5 applies to teacher associates who work for the employer. The Employment Appeal Board's April 26, 2006 decision for appeal 06B-UI-01205 is persuasive. As a result of the Employment Appeal Board's April 26 decision and the above analysis, the claimant is subject to the "between-term" denial provision of Iowa Code § 96.4-5 and the claimant is denied benefits between school years effective June 4, 2006.

The issue of overpayment was not indicated as a hearing issue. Since the claimant is not legally entitled to receive benefits as of June 4, 2006, the issue of the amount of overpayment the claimant has received since June 4, 2006, is remanded to the Claims Section to determine.

DECISION:

The representative's July 7, 2006 decision (reference 01) is reversed. The claimant is denied benefits between school years effective June 4, 2006. The issue of overpayment is remanded to the Claims Section to determine.

dlw/cs