

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

LYNN A MURPHY
1646 FINLEY ST
DUBUQUE IA 52001

HILLCREST FAMILY SERVICES
2005 ASBURY RD
DUBUQUE IA 52001-3042

AMENDED

Appeal Number: 06A-UI-07352-DWT
OC: 06/11/06 R: 04
Claimant: Respondent (2)

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
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hillcrest Family Services (employer) appealed a representative's July 11, 2006 decision (reference 01) that concluded Lynn A. Murphy (claimant) was eligible to receive unemployment insurance benefits because she was not performing work for the employer in the same manner as in her base period. A telephone hearing was held on August 9, 2006. The claimant participated in the hearing. Julie Heiderscheid, the director of human resources, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were admitted as evidence. The administrative law judge took judicial notice of Employment Appeal Board decision 06B-UI-01205. 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.

This Amended Decision is issued to correct dates the claimant received benefits and the total amount overpayment amount. These changes will be bolded.

ISSUES:

Is the claimant subject to Iowa Code § 96.4-5 – denial of benefits because she is between academic terms?

Has the claimant been overpaid any unemployment insurance benefits?

AMENDED 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 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. (Employer Exhibit One.) 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. Students in the satellite classrooms are students who have been transferred from their home school to the satellite classroom 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. Teachers are required to have college degrees and teaching certificates to teach for the employer. Teacher associates are not required to have any certification and the education required is a high school diploma. (Employer Exhibit One.)

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.

On March 10, 2005, the claimant began working for the employer as a full-time teacher's associate in an on-campus classroom. The claimant entered into a contract for the 2005-2006

school year. (Employer Exhibit Three and Four.) The claimant worked as a teacher's associate from mid-August 2005 to early June 2006.

The claimant received a letter of assignment on June 1, 2006. This letter indicated the dates she would again be working for the employer during the 2006-2007 school year. The hourly rate of pay was yet to be determined by collective bargaining. (Employer Exhibit Two.)

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 11, 2006. During this benefit year, the claimant's benefits are all based on the services performed for the employer in the employer's school. The claimant filed for and received a total of **\$1,264.00** in unemployment insurance benefits for the weeks ending **June 24 through August 5, 2006.**

AMENDED 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 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. As a result, the claimant is subject to the "between-term" denial provisions of Iowa Code § 96-4-5-a and is denied benefits between school years effective June 11, 2006.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending **June 24 through August 5, 2006**. The claimant has been overpaid **\$1,264.00** in benefits she received for these weeks.

This decision has a different result than the decision for appeal 06A-UI-07351-DWT because in the claimant's first benefit year (06A-UI-07351-DWT) the claimant had not performed worked in her base period as a teacher's associate. In the most recent benefit year that this decision is based upon, all the claimant's wages in her base period are based on wages she earned as a teacher's associate.

AMENDED DECISION:

The representative's July 11, 2006 decision (reference 01) is reversed. The claimant is denied benefits between school years effective June 11, 2006. The claimant is not legally entitled to receive benefits for the weeks ending **June 24 through August 5, 2006**. The claimant has been overpaid and must repay a total of **\$1,264.00** in unemployment insurance benefits she received for these weeks.

dlw/pjs/pjs