

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

GINA D MILER
435 – 10TH AVE S
CLINTON IA 52732

IOWA EAST CENTRAL TRAIN
2804 EASTERN AVE
DAVENPORT IA 52803-2012

AMENDED

Appeal Number: 04A-UI-06339-HT
OC: 05/30/04 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 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 – Successive Academic Terms
Section 9/63-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Iowa East Central TRAIN (TRAIN), filed an appeal from a decision dated June 4, 2004, reference 01. The decision allowed benefits to the claimant, Gina Miller. After due notice was issued, a hearing was held by telephone conference call on July 12, 2004. The claimant participated on her own behalf. The employer participated by Benefits Administrator Pamela Damhorst.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Gina Miller began employment with TRAIN in January 2001. She a Head Start teacher. She works during the regular school year but not during the summer. The employer intends for her to return in the fall of 2004 and the claimant intends to return.

TRAIN is a not for profit corporation whose main function is to administer the Head Start education program in its area, as well as the required supplemental programs. Seventy percent of its revenue and employees are from Head Start.

Gina Miller filed a claim for unemployment benefits with an effective date of May 16, 2004. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 24.52(7) provides:

(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive

academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

- a. A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.
- b. A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

The record establishes the claimant works for a non-profit organization whose primary function is to administer the Head Start program. TRAIN does not administer the Head Start, as only a small portion of its overall community services, which the administrative law judge determines makes it an educational program. The claimant has reasonable assurance of continued employment in the fall and is therefore unemployed during two successive academic years. She is not eligible to receive benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant is overpaid \$530.00.

DECISION:

The representative's decision of June 4, 2004, reference 01, is reversed. Gina Miller is not eligible to receive unemployment benefits. The claimant is overpaid \$530.00.

bgh/b/b