

**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 ROAD
DUBUQUE IA 52001-3042**

**Appeal Number: 05A-UI-07140-SWT
OC: 06/12/05 R: 04
Claimant: Respondent (1)**

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-b – School Employee Between Academic Terms
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 7, 2005, reference 01, that concluded the claimant was on a short-term layoff. A telephone hearing was held on July 28, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Julia Holdridge participated in the hearing on behalf of the employer with a witness, Stephanie Carpenter. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The employer is a private non-profit social service agency in Dubuque, Iowa. The employer has several different programs providing services to adults and children, including counseling, foster care, adoption, and residential facilities for adults and children with mental and emotional problems. One component of the employer is a kindergarten through 12th grade school funded

by the area school districts for students with behavioral problems that prevent them from being successful in a traditional classroom. The school is accredited by the state board of education as a school.

The claimant worked for the employer as a housekeeper from March 13, 2003 until March 10, 2005. The claimant's job involved cleaning offices, apartments, and residence halls and was not exclusively or primarily cleaning facilities operated by the kindergarten through 12th grade educational program. The claimant worked year-round in this position.

On March 10, 2005, the claimant signed the contract for the remainder of the 2004-2005 school year to work in a classroom as a teacher associate. The claimant worked in that position until June 6, 2005, when the school year was completed. On June 6, 2005, the claimant was offered a contract to perform services as a teacher's associate for the 2005-2006 school year. The claimant signed this contract on June 13, 2005. The claimant had reasonable assurance of working as a teacher's associate as of June 6, 2005.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 12, 2005. The claimant's base period is from January 1, 2004 to December 31, 2004. The claimant was not working as a school employee during her base period.

Although the employer posts summer job openings, the claimant was never personally offered a job. Candidates for job opening must apply and be selected for hiring. The department has not directed the claimant to apply for available jobs with the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is subject to the unemployment insurance law's "between terms" provision that denies benefits to certain educational employees with reasonable assurance of reemployment between school terms.

Iowa Code section 96.4-5-a provides that benefits based on services performed in an instructional capacity for an educational institution shall not be paid between two academic years or terms if the individual has a contract or reasonable assurance of employment in the same capacity for both such academic years or terms. In this case, the claimant's benefits were based on her year-round employment as a housekeeper for the employer. As a result, the claimant is not subject to disqualification under Iowa's "between-terms" statute.

The issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code section 96.4-3.

Claimant can be disqualified for refusing offers of suitable work and for failing to apply for a job when directed to do so by the department. Iowa Code section 96.5-3. There is no disqualification imposed for individuals who do not apply for work with their employer from whom they are laid off. There is no evidence that the claimant is not able to or available for work.

DECISION:

The unemployment insurance decision dated July 7, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf