

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GWENDOLYN F FOUNTAIN
Claimant

APPEAL 19A-UI-05793-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

OC: 06/16/19
Claimant: Respondent (1R)

Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The employer/appellant, Hillcrest Family Services, filed an appeal from the July 17, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer, Hillcrest Family Services, participated through Julie Heiderscheit, president/CEO.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibit 1-8 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did claimant have reasonable assurance of continued employment in the next school term?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment in January 2017 as a full-time teacher’s assistant. The claimant performed work in that capacity for the 2017-2018 school year and for the 2018-2019 school year. Her last day worked in that capacity was June 10, 2019.

The employer had subcontracted for years with Dubuque Community School Districts (DCSD) pursuant to an agreement under Iowa Code section 28E to operate a special education program on its campus (Employer Exhibit 1-2). The employer was responsible for employing all staff and DCSD reimbursed the employer for the expenses of running the facility (Employer Exhibit 1-2). At the beginning of the 2018-2019 school year, DCSD decided it would not subcontract with the employer the following year and it would assume operation of the program ((Employer Exhibit 1-2). The employer, Hillcrest, did not offer the claimant a teaching assistant position for the 2019-2020 school year.

The employer reported the claimant did apply and was interviewed for a position with Dubuque Community School Districts in March 2019, and that an offer of work was extended to the

claimant by Dubuque Community School Districts in June 2019 (Heiderscheit testimony, Employer Exhibit 5).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not have reasonable assurance of returning to work the following academic term or year.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

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.

Iowa Admin. Code r. 871-24.51(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.

A claimant who works for an educational institution is not eligible to receive benefits during the period between two successive academic years or terms when the claimant performs services in the first of such academic years or terms and has reasonable assurance that she will perform services for the second of such academic years or terms. Iowa Code §96.4(5).

In this case, the claimant is an employee of an educational institution. Her unemployment insurance benefits would be based exclusively on her wages from her school employment. The claimant was not offered a teaching assistant position from this employer for the 2019-2020 school year, and does not have reasonable assurance with this employer. Therefore, she is eligible for benefits, provided she meets all other requirements.

However, whether the claimant had reasonable assurance of educational employment with DCSD (account number 101899) for the 2019-2020 school year has not been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

REMAND: The issues of whether the claimant refused an offer of suitable work with Dubuque Community School District (DCSD) in June 2019, and whether the claimant had reasonable assurance of educational employment with DCSD (account number 101899) for the 2019-2020 school year are remanded to the Benefits Bureau of IWD for a fact-finding interview with notice to the claimant and DCSD and an unemployment insurance decision issued to both parties with appeal rights.

DECISION:

The July 17, 2019 (reference 01) initial decision is affirmed. The claimant does not have reasonable assurance of returning to work for the 2019-2020 school year or term with Hillcrest Family Services. Benefits are allowed, provided she is otherwise eligible.

REMAND: The issues of whether the claimant refused an offer of suitable work with Dubuque Community School District (DCSD) and whether the claimant had reasonable assurance of educational employment with DCSD (account number 101899) for the 2019-2020 school year are remanded to the Benefits Bureau of IWD for a fact-finding interview with notice to the claimant and DCSD and an unemployment insurance decision issued to both parties with appeal rights.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn