

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

JENNIFER L MILLER
2415 CENTRAL AVE
CEDAR FALLS IA 50613

KAPLAN HIGHER EDUCATION CORP
c/o TALX EMPLOYER SVCS
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-06377-JTT
OC: 05/21/06 R: 03
Claimant: Appellant (2R)

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) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

Jennifer Miller filed a timely appeal from the June 15, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 11, 2006. Ms. Miller participated and presented testimony through Campus President Connie Reidy. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. However, it should be noted that Ms. Reidy is a Kaplan Higher Education employee and holds a supervisory position over Ms. Miller and Ms. Miller's immediate supervisor.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 9, 2004, Jennifer Miller commenced full-time employment as a "high school coordinator" with

Kaplan Higher Education Corporation. The employer is a *for-profit private* corporation. Kaplan Higher Education Corporation owns and operates Hamilton College and Ms. Miller offices at a Hamilton College campus. As a high school coordinator, Ms. Miller responds to high school teachers' requests for a guest speaker and conducts seminars regarding career development, budgeting, and college preparation. At the end of these speaking engagements, Ms. Miller collects career survey cards the students complete during the seminar. Kaplan Higher Education Corporation then uses the survey cards to recruit students to Hamilton College. Ms. Miller travels to more than 40 different school districts to conduct seminars. Kaplan has no contractual arrangement with any of the school districts, but instead obtains marketing leads in exchange for providing the seminars conducted by Ms. Miller. Because the high schools do not need guest speakers during the summer, Kaplan lays Ms. Miller off for the summer. Ms. Miller was laid off during the summer of 2005 and returned to her duties in the fall when high school classes started. On May 19, 2006, Kaplan laid Ms. Miller off for the 2006 summer. Campus President Connie Reidy has assured Ms. Miller that she will return to her duties in the fall when high school classes resume and Ms. Miller intends to return to her duties.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Miller is disqualified for benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5). She is not.

Iowa Code section 96.4(5) provides as follows:

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:

a. Benefits based on service in an instructional, research, or principal administrative capacity in 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 during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

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.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "*educational service agency*" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

871 IAC 24.51(1) provides as follows:

Educational institution means public, *nonprofit*, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

Because Kaplan Higher Education Corporation is a *for-profit private* entity, the between terms disqualification provisions set forth at Iowa Code section 96.4(5) do not apply to Ms. Miller.

Because the only issue for which the parties received formal notice was the issue of whether the between academic terms disqualification applied to Ms. Miller, and because the employer was not available to waive formal notice on the separation issues, this matter will be remanded so that a claims representative can address whether there has been a separation from employment, the nature of any such separation, and Ms. Miller's eligibility for benefits.

DECISION:

The Agency representative's June 15, 2006, reference 01, decision is reversed. The provisions of Iowa Code section 96.4(5) regarding between academic terms disqualification do not apply to the claimant, who worked for a *for-profit private* entity.

REMAND:

This matter is remanded to a claims representative for determination of whether there has been a separation from employment, the nature of any such separation, and Ms. Miller's eligibility for benefits.

jt/kkf