

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GREGORY S MILLER
Claimant

APPEAL NO. 10A-UI-01838-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY
Employer

OC: 12/20/09
Claimant: Respondent (2)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed a representative's January 25, 2010 decision (reference 01) that concluded the claimant was on a short-term layoff and eligible to receive benefits as of December 20, 2009. A telephone hearing was held on March 17, 2010. The claimant participated in the hearing. Mallory Schon appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. 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.

ISSUES:

Is the claimant eligible to receive unemployment insurance benefits for the week ending December 26, 2009?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant is an A-based faculty employee who is required to take six days of furlough between December 1, 2009, and June 30, 2010. He receives a monthly salary. The employer paid the claimant his December 2009 salary without any reductions. The employer will reduce the claimant's January through June salary by 2.3 percent each month. (Employer Exhibit A.)

The claimant took his furlough days on December 21, 22, 23, 28, 29 and 30, 2009. He established a claim for benefits during the week of December 20, 2009. He filed a claim for benefits for the week ending December 26, 2009. He did not report any wages for this week. He received his maximum weekly benefit amount of \$402.00, plus an additional \$25.00 from the government's economic stimulus program. The claimant also filed a claim for the week ending January 2, 2010. He reported wages or holiday pay that exceeded his weekly benefit amount during this week. As a result, he did not receive any benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19-38-b provides: “ An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.”

Under this statute, the claimant would not be eligible for unemployment because while he worked less than his full-time work week, but his earnings for the week stayed the same because he received his full salary.

The claimant would have been eligible for benefits if the employer had not paid him his regular December salary or deducted the amount of pay attributed to the furlough days immediately. But the employer spread the pay reduction over several months; January through June, or after the claimant took his furlough days. As a result, there is no week in which the claimant's earnings are less than his weekly benefit amount plus \$15.00.

Since the claimant's December salary was not reduced, he should have reported the amount equal to his weekly salary during the week ending December 26, 2009. This amounts to over \$2,000.00. (Employer Exhibit A.) Since this amount exceeds his maximum weekly benefit amount, the claimant is not legally entitled to receive benefits for the week ending December 26, 2009.

If an individual receives benefits he 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 section 96.3-7. The claimant has been overpaid \$427.00 in benefits he received for the week ending December 26, 2009. The claimant is not at fault in receiving the overpayment.

DECISION:

The representative's January 25, 2010 decision (reference 01) is reversed. The claimant is not eligible to receive benefits for the week ending December 26, 2009, because the wages and or holiday pay he earned/received for this week exceeded his maximum weekly benefit amount. He has been overpaid and must repay a total of \$427.00 in benefits he received for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs