

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

IAN H MCMURRAY

Claimant

APPEAL 21R-UI-18933-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 05/17/20

Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of protest
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able to and available for work
Iowa Code § 96.7(2)(A)(2) – Same Hours and Wages
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications

STATEMENT OF THE CASE:

On September 1, 2021 the claimant filed an appeal from the March 2, 2021 reference 01 unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 4, 2021. Claimant participated personally. The employer participated through Jessica Wade. The administrative law judge found that the claimant was not able and available. Claimant appealed to the Employment Appeal Board, which remanded the matter to the administrative law judge to conduct a new hearing. A new telephone hearing was held on October 19, 2021. Claimant participated personally. The employer participated through Scott Coons.

ISSUES:

Was the claimant's appeal timely?
Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to work and available for work?
Is claimant still employed at the same hours and same wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in August 2018 in a variety of roles while in graduate school. In March 2020 claimant was working in a couple different roles for the employer, both as a grad fellow, which is non-reportable student wages and in a graduate teaching position. Claimant graduated from graduate school in May 2020. During the summer 2020 claimant worked during two pay periods for the employer logging 18 and 31 hours respectively. Claimant signed a contract contingent on adequate enrollment to serve as an adjunct assistant professor for the fall 2020 semester. Claimant started in that position August 25, 2020, and signed an additional contract for the spring semester 2021. That contract ended on May 8, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant has filed a timely appeal as required by the Iowa Employment Security Law.

Iowa Code § 96.6(2) provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant did not receive the decision due to be being forwarded to his new address. Claimant filed his appeal immediately thereafter. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant was available for work during the time in question.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

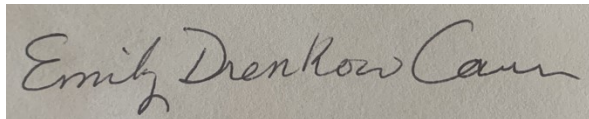
- (1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.
- (2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

During the summer 2020 claimant reported his income in the two instances where he was paid for grading, but otherwise was totally unemployed during the weeks in question.

Claimant testified credibly that he was "actively seeking work" during this time as the fall contract was contingent on enrollment. This being the very beginning of the COVID-19 pandemic enrollment was uncertain so much so that the university kept the opportunity to enroll open longer than normal. Claimant additionally testified that he was making the desire to work known throughout the university but explained that the "limited due to COVID." The fact that claimant was actively seeking work is demonstrated by the grading work he found. Claimant's two instances of short term employment doing grading work during the summer demonstrate that he was able to work, was available for work, and was earnestly and actively seeking work. Claimant was able and available for work.

DECISION:

The March 2, 2021 reference 01 unemployment insurance decision is reversed. Benefits are allowed.



Emily Drenkow Carr
Administrative Law Judge

November 17, 2021
Decision Dated and Mailed

ed/kmj