

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MYRON S MIKITA

Claimant

APPEAL 21A-UI-04809-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GILBERTVILLE—DON BOSCO

Employer

OC: 03/29/20

Claimant: Respondent (4R)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On February 4, 2021, the employer, Gilbertville—Don Bosco, filed an appeal from the February 2, 2021 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was unemployed between academic years or terms effective March 22, 2021. The parties were properly notified of the hearing. A telephonic hearing was held on Wednesday, April 14, 2021. The claimant, Myron S. Mikita, participated. The employer, Gilbertville—Don Bosco, participated through witness Tiffany Moses, Business Manager; and hearing representative Paul Jahnke represented the employer. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is claimant Myron S. Mikita totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant works for the employer in two roles, and has done so since August 1, 1990. Claimant is both the full-time band teacher and director of band as well as a part-time janitorial employee.

In March 2020, Governor Reynolds issued a mandate closing all of Iowa's K-12 schools for in-person learning, due to the COVID-19 pandemic. Once the employer's school was closed, there was no work available for claimant as a janitorial employee. Claimant remained able to work remotely in his full-time position and taught students via Zoom.

Claimant opened a claim for benefits effective March 29, 2020, because the employer instructed him to do so. When he filed his weekly continued claim for benefits that week, claimant reported that he worked and earned \$761.00 in wages that week. Because claimant's income exceeded his weekly benefit amount of \$481.00 plus fifteen dollars, he did not receive any benefits that week. Claimant acknowledged that he knows he received no benefits for the week ending April 4 because of how much income he reported.

For the following four weeks, claimant filed weekly continued claims for benefits and reported no income for any of the four weeks. Claimant testified that the weekly claim screen just asked him if he had performed any work or earned any wages as a janitor, so claimant responded "no."

Claimant was brought back to work in his janitorial position effective May 4, 2020. He stopped filing weekly continued claims for benefits at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was neither totally nor partially unemployed. The underlying decision is modified in favor of employer/appellant.

Iowa Code § 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 § 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.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Here, the credible testimony taken during the hearing establishes that claimant was working full-time hours and receiving approximately \$761.00 each week for his full-time work as a band teacher and band director. Claimant's intentional failure to report this employment and income when filing his weekly claims does not make him eligible for benefits.

Claimant was not totally unemployed, as he was working full-time hours each week. Claimant was not partially unemployed, as the evidence in the record establishes that he earned more than his weekly benefit amount plus fifteen dollars each week. Therefore, claimant is not entitled to unemployment insurance benefits.

This matter will be remanded for determination of overpayment and for possible imposition of penalty.


DECISION:

The February 2, 2021 (reference 02) unemployment insurance decision is modified in favor of the employer/appellant. Claimant was neither totally nor partially unemployed, and he is not eligible for unemployment insurance benefits.

REMAND:

The issue of whether claimant has been overpaid regular unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for initial determination.

The issue of whether claimant is subject to a penalty for intentional misrepresentation to the agency is remanded to the Integrity Bureau of Iowa Workforce Development for investigation and determination.



Elizabeth A. Johnson
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April 19, 2021
Decision Dated and Mailed

lj/scn