

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT E WENDT
Claimant

APPEAL NO. 10A-UI-07675-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY
Employer

**Original Claim: 04/25/10
Claimant: Respondent (2/R)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Iowa State University (employer) appealed a representative's May 13, 2010 decision (reference 01) that concluded Scott E. Wendt (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2010. The claimant participated in the hearing. Greg Bohles appeared on the employer's behalf. 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.

ISSUE:

Was the claimant partially or temporarily unemployed and therefore eligible for full or partial unemployment insurance benefits for the benefit week ending May 1, 2010?

FINDINGS OF FACT:

The claimant started working for the employer on August 21, 1994. He normally works full-time, year round, as an associate scientist at a monthly salary of \$3,474.00.

Due to budget cuts, the employer required the claimant to take six days of unpaid furlough before June 30, 2009. He could either take the six days together or spread them out. However, under the furlough plan, the reduction in pay attributable to the six unpaid furlough days taken is to be spread out over first six months of 2010, not necessarily in the periods in which the furlough is taken. The claimant took five of his six furlough days all together on April 26 through April 30, 2010. The reduction in pay for the furlough days will be made spread out over the claimant's January through June 2010 paychecks.

The claimant filed a weekly claim for unemployment insurance benefits for the week ending May 1, 2010. His weekly benefit amount was determined to be \$423.00. The claimant reported that he had received no wages for the week ending May 1, 2010, and was paid the regular \$423.00 benefits plus an additional \$25.00 from the government's economic stimulus program.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b. While the claimant worked less than his regular full-time work week during the week ending May 1, his earnings for the week were unaltered; he received his full, albeit prorated, salary.

This administrative law judge shares the concern of colleagues as voiced in other decisions issued in similar cases regarding the equity of the situation, as the claimant would have been eligible for benefits if the employer had deducted the whole amount of pay attributed to the furlough days during the week in which the furlough days were taken. Further, it is apparent that the claimant was given contradictory information and instructions even from within management of his own department as to whether he could be eligible to receive unemployment insurance benefits. As is, because the pay reduction was spread out after the furlough days were taken, there ends up being no week in which the claimant's earnings are less than his weekly benefit amount plus \$15.00. I am persuaded, however, that this pay reduction allocation was not to manipulate the unemployment system, but instead was to cushion the blow of the reduction by spreading it out.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits in good faith but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's May 13, 2010 decision (reference 01) is reversed. The claimant is not eligible for unemployment insurance benefits for the week ending May 1, 2010. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw