

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN PENNINGTON
Claimant

MOUNT MERCY UNIVERSITY
Employer

APPEAL 21R-UI-18335-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (2)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On March 11, 2021, claimant Steven Pennington filed an appeal from the March 8, 2021 (reference 02) unemployment insurance decision that denied benefits effective September 6, 2020, on the basis that claimant was still employed on-call and was not eligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 8:05 a.m. on Tuesday, October 12, 2021. Appeal numbers 21A-UI-18333-LJ-T and 21A-UI-18335-LJ-T were heard together and created one record. The claimant, Steven Pennington, participated. The employer, Mount Mercy University, participated through Connie Albaugh, Associate Human Resource Director. Claimant's Exhibits A, B, and C was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant totally, partially, or temporarily unemployed effective September 6, 2020?
Was the claimant able to work and available for work effective September 6, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer Mount Mercy University on August 21, 2019, as an adjunct professor for the Fall 2019 term. Claimant continued in that role in the Spring 2020 term. During spring semester, claimant taught one class and one accompanying lab.

The employer did not issue claimant a contract offering continued employment for the Fall 2020 term. Albaugh explained that due to low enrollment numbers, the employer reduced the number of adjunct professors it employed. Technically, claimant was still considered "employed" as a temporary employee, though he was not assigned any work that semester.

Claimant opened his claim for unemployment insurance benefits effective May 31, 2020, because he was supposed to teach a summer course for a local community college and that course was cancelled. (Exhibit B) Claimant performed no work for any employer over the summer of 2020.

Initially claimant had no work during the fall of 2020. Claimant attended a training during the fall and received a \$94.00 stipend during the week ending September 27, 2020. Claimant reported this stipend as wages when filing his weekly claim that week. He mistakenly re-reported this stipend when filing his weekly claim two weeks later, for the week ending October 10, 2020. Claimant eventually secured a position in October 2020, after which he began working and stopped filing for unemployment insurance benefits.

Claimant testified that he was physically able to work from the effective date of his claim through the last date he filed for benefits. He was generally available to accept work. However, during the week of June 22 through June 26, claimant was out of town on vacation and was not available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was totally or partially employed effective September 6, 2020. Benefits are allowed, provide claimant is otherwise eligible.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has not performed services or earned wages for all but two of the weeks during which he claimed benefits. For all but the weeks ending September 27, 2020, and October 10, 2020, claimant was totally unemployed and eligible for benefits.

For the weeks ending September 27, 2020, and October 10, 2020, claimant reported minimal wages. Claimant's testimony indicated these wages represented a stipend he received related to a training he attended. He also stated that he mistakenly reported this stipend twice and did not actually receive it during the week ending October 10, 2020. The administrative law judge finds claimant was partially unemployed during those two weeks, as for both weeks he was separated from regular employment and earning less than his weekly benefit amount plus fifteen dollars. Benefits are allowed for those two weeks.

DECISION:

The March 8, 2021 (reference 02) unemployment insurance decision is reversed. Claimant was either totally or partially unemployed effective September 6, 2020, through the last week for which he claimed benefits. Benefits are allowed.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 18, 2021
Decision Dated and Mailed

lj/ol