

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA D NEFF-LETTS
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL NO. 21A-UI-01225-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/4/20
Claimant: Appellant (4R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 9, 2020, reference 02, decision that denied benefits for the period beginning October 4, 2020, based on the deputy's conclusion that the claimant still employed under the same wages and conditions as in the original contract of hire and could not be deemed partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 16, 2021. Claimant participated. Jessica Wade represented the employer. Exhibit A, the appeal letter, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A. and KLOG.

ISSUES:

Whether the claimant may be considered for benefits for the week that ended October 3, 2020.
Whether the claimant was able to work and available for work during the benefit weeks that ended October 10, 2020 and December 19, 2020.
Whether the employer's account may be charged for benefits for the weeks that ended October 10, 2020 and December 19, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by The University of Iowa Hospital & Clinics as a full-time Administrative Services Specialist in the Genetics Department. Due to current economic conditions, the employer has in place a mandatory furlough requirement under which the claimant was required to take the equivalent of two weeks off without pay during the fiscal year that started on July 1, 2020 and that will end on June 30, 2021. The furlough is to be scheduled consistent with the business needs of the employing department. During the week of September 27, 2020 through October 3, 2020, the claimant was off work without pay pursuant to the required furlough. The claimant worked her regular full-time during the week that preceded the furlough and returned to her regular full-time hours during the week that followed the furlough.

The claimant did not take steps during the week of September 27, 2020 through October 3, 2020 to establish an unemployment insurance claim that would be effective that week.

On October 5, 2020, the claimant applied for unemployment insurance benefits and established an original claim for benefits that was effective October 4, 2020. Iowa Workforce Development set the weekly benefit amount at \$493.00. On October 11, 2020, the claimant made a weekly claim for the benefit week that ended October 10, 2020. The claimant reported zero wages and received \$493.00 in unemployment insurance benefits, though the claimant was actually back at work full-time during the week in question and earned wages that well exceeded her weekly benefit amount.

During the week of December 13-19, 2020, the claimant was again off work without pay pursuant to the required furlough. The claimant worked her regular full-time during the week that preceded the furlough and elected to use accrued vacation during the week that followed the furlough in lieu of returning to work that week. The claimant returned to her full-time employment during the week that started December 27, 2020.

During the week December 13-19, 2020, the claimant took steps to establish an "additional claim" for benefits that was effective December 13, 2020. On December 21, 2020, the claimant made a weekly claim for the week that ended December 19, 2020. Iowa Workforce Development has not disbursed benefits for the week that ended December 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

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.

If a claimant to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant was fully employed during the week that ended October 10, 2020, cannot be deemed temporarily or partially unemployed during that week, cannot be deemed "available" within the meaning of the unemployment insurance law during that week and is not eligible for benefits for that week.

The claimant was temporarily laid off during the week that ended December 19, 2020 and is eligible for benefits for that week, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant for the week that ended December 19, 2020.

The claimant is not eligible for benefits for the week that ended October 3, 2020 because the claimant did not take timely steps to establish a claim that would have been in effect during that week. Iowa Administrative Code rule 871-24.2(1)(a) and (h) provide as follows:

Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

a. Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment, shall file an initial claim for benefits electronically, in person at a local department office, or by other means prescribed by the department and register for work. A claim filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed.

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

1. The failure of the department to recognize the expiration of the claimant's previous benefit year;
2. The claimant filed an interstate claim against another state which has been determined as ineligible.

DECISION:

The December 9, 2020, reference 02, decision is modified in favor of the claimant/appellant as follows. The claimant is not eligible for benefits for the week that ended October 3, 2020 because the claimant did not take timely steps to establish a claim that would have been in effect during that week. The claimant was fully employed during the week that ended October 10, 2020, cannot be deemed temporarily or partially unemployed during that week, cannot be deemed "available" within the meaning of the unemployment insurance law during that week and is not eligible for benefits for that week. The claimant was temporarily laid off during the week that ended December 19, 2020 and is eligible for benefits for that week, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant for the week that ended December 19, 2020.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the benefits the claimant received for the week that ended October 10, 2020.



James E. Timberland
Administrative Law Judge

February 26, 2021
Decision Dated and Mailed

jet/lj