

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANTHONY J ANDREWS**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL 21A-UI-16188-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/09/21  
Claimant: Appellant (4R)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.1A(37)– Total, Partial, Temporary Unemployment

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 12, 2021 (reference 01) unemployment insurance decision that denied unemployment insurance benefits effective May 9, 2021 finding that the claimant was still employed in his part-time job at the same hours and same wages as his original contract of hire. After due notice was issued, a telephone hearing was held on September 8, 2021. The claimant participated personally. The employer participated through witness Scott Coons. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant eligible for total, partial or temporary unemployment benefits?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant began working for this employer on August 14, 2018 as a part-time graduate teaching assistant. He entered into a contract of hire effective August 1, 2018. His position as a teaching assistant required him to be enrolled as a student at the employer's educational institution. Claimant was enrolled in the employer's master's program. The contract of hire was for a one-year period during the academic calendar of the university. The contract stated that it could be extended for up to three years.

Claimant's master program lasted for the three-year period that claimant was employed with this employer. He completed the contract by completing his teaching duties during the spring semester of 2021. The spring semester of 2021 ended on or about May 14, 2021. Claimant's last day physically worked on the job was May 9, 2021 due to him finishing his teaching duties early. Claimant graduated in May of 2021 from his master's program. Claimant has been able to work and available for work since completing the contract and has been searching for work.

The issue of whether the claimant's separation from employment was disqualifying or whether the wages the claimant earned by performing service for this educational institution shall or shall not be included in the unemployment insurance claim under Iowa Code § 96.1A(16)g(6) and

Iowa Admin. Code r. 871-23.20 is remanded to the Benefits Bureau for an initial investigation and determination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

Required Findings.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(37) provides as follows:

Definitions. As used in this chapter, unless the context clearly requires otherwise:

37. "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.

Iowa Code § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(emphasis added).

In this case, the claimant is totally unemployed as of May 14, 2021, which was the end of his contract with this employer. Effective the benefit week beginning May 16, 2021, the claimant has earned no wages and performed no services for this employer. Claimant has credibly established that effective May 16, 2021, he has been able to work and available for work. As such, the claimant is totally unemployed effective May 16, 2021 and benefits are allowed, provided he meets all other eligibility requirements.

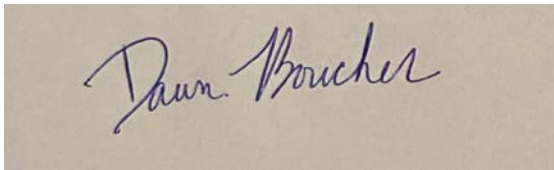
For the period of time from his original claim date of May 9, 2021 through May 15, 2021, claimant was still under his contract and performing services for the employer at the same hours and same wages as his original contract of hire. Benefits are denied for the one-week period from May 9, 2021 through May 15, 2021 as the claimant was not unemployed.

**DECISION:**

The July 12, 2021 (reference 01) decision is modified in favor of the appellant. Claimant was still employed at the same hours and same wages as his original contract of hire for the one-week period of May 9, 2021 through May 15, 2021 and benefits are denied for that one-week period of time. Claimant has been totally unemployed effective May 16, 2021 and established that he has been able to and available for work. Benefits are allowed effective May 16, 2021, provided the claimant meets all other eligibility requirements.

**REMAND:**

The issue of whether the claimant's separation from employment was disqualifying or whether the wages the claimant earned by performing service for this educational institution shall or shall not be included in the unemployment insurance claim under Iowa Code § 96.1A(16)g(6) and Iowa Admin. Code r. 871-23.20 is remanded to the Benefits Bureau for an initial investigation and determination.

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Dawn Boucher  
Administrative Law Judge

September 17, 2021  
Decision Dated and Mailed

db/scn