

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A MAEHNER
Claimant

APPEAL NO. 15A-UI-11283-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 08/23/15
Claimant: Respondent (3)

Iowa Admin Code r. 871 IAC 24.23(26) – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The University of Iowa filed a timely appeal from a representative's decision dated October 5, 2015, reference 02, which held claimant eligible to receive unemployment insurance benefits beginning August 23, 2015 finding that the claimant was still employed part time working on-call when work was available. After due notice, a telephone hearing was held on October 26, 2015 at which time the claimant participated personally. Appearing on behalf of the claimant was Mr. Paul McAndrew, Attorney at Law. The employer participated by Ms. Mary Eggenburg and Mr. Abuwasi Bonteng. Both parties waived notice on the issue of whether the claimant had been discharged for misconduct or voluntarily quit employment without good cause attributable to the employer. After the available time was exhausted on October 26, 2015, the matter was continued. The hearing resumed by telephone conference call on November 9, 2015 and was consolidated with the agreement of both parties with appeal number 15A-UI-10704-TN-T. The claimant participated personally. Appearing on behalf of the claimant was Mr. Paul McAndrew, his attorney. The employer participated by Mr. David Bergeon, Director of Human Resources for The University of Iowa Hospital Systems; Mr. Abuwasi (George) Bonteng, Assistant Department Manager; and Ms. Mary Eggenburg, Benefits Specialist.

ISSUE:

The issue is whether the claimant was still employed working part time or working on call and eligible to receive partial unemployment insurance benefits beginning August 23, 2015.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Scott Maehner began employment with The University of Iowa on January 4, 1993 and was employed by The University of Iowa until July 23, 2015 when the employer discharged the claimant based upon the belief that Mr. Maehner had abandoned his job for failing to report or provide notification for three consecutive work days. Mr. Maehner was employed as a part-time kitchen helper averaging 20 hours of work per week and was paid by the hour. His immediate supervisor was Mr. Bonteng.

Mr. Maehner had been injured on the job and had initially been off work with the authorization of his doctor and was calling in each day of his absence. When Mr. Maehner attempted to return to work he had a job restriction from his physician that allowed him to lift only five pounds and raise his right arm and only a limited degree. When Mr. Maehner gave his doctor's limits to Ray Hernandez, a supervisor, he was instructed to: "go home, get well and then return to work." Mr. Maehner reasonably interpreted the statement to mean that the employer was aware of his medical status and he did not need to report back to work or call in for the next few days until his status changed, and didn't call in on July 31, August 1 or August 2, 2015. Mr. Maehner's condition improved and he returned to work the next scheduled working day. When he reported back he also had a slip from his doctor that authorized him to do more lifting and reaching. Mr. Hernandez asked why the claimant had not call in for the last three work days. The claimant explained. Mr. Hernandez concluded it was due to "miscommunication" between the parties and directed Mr. Maehner to begin working.

Later that day, Mr. Bonteng discharged the claimant. Mr. Bonteng concluded that the claimant had intentionally chosen not to call in for three days in violation of policy therefore, had chosen to quit his job.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The first question before the administrative law judge is whether the adjudicator's determination that the claimant was still employed part time and working on call beginning August 23, 2015 was correct. It is not. The evidence in the record of the consolidated hearing clearly establishes that Mr. Maehner was separated from his employment on or about August 4, 2015 and was not employed part time or in any other capacity by The University of Iowa beginning August 23, 2015.

The second question before the administrative law judge is whether the claimant is eligible to receive unemployment insurance benefits. He is. The administrative law judge decision in appeal number 15A-UI-10704-TN-T concluded that the claimant had been discharged from employment for no disqualifying reason and found the claimant eligible to receive unemployment insurance benefits provided that the claimant meets all other eligibility requirements of Iowa law.

Although the claimant is not qualified to receive partial unemployment insurance benefits beginning August 23, 2015 from this employer, the claimant remains eligible to receive unemployment insurance benefits based upon his non disqualifying job separation from this employer, providing that he meets all other eligibility requirements of Iowa law. This decision does not affect Mr. Maehner's qualification to receive unemployment insurance benefits based upon his earlier separation from employment with The University of Iowa.

DECISION:

The representative's decision dated October 5, 2015, reference 02, holding the claimant eligible to receive partial unemployment insurance benefits beginning August 23, 2015 finding the claimant was still employed part time or working on call when work was available is affirmed as modified. The portion of the determination finding the claimant eligible to receive unemployment insurance benefits is affirmed. The portion of the determination finding the claimant was still employed part time or working on call as of August 23, 2015 is reversed. The claimant had been previously separated from employment and was no longer employed by this employer effective August 23, 2015.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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