

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL A GORMLEY
Claimant

APPEAL NO. 10A-UI-05106-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY
Employer

OC: 03/07/09
Claimant: Respondent (2-R)

Iowa Code § 96.19-38 – Eligibility for Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 25, 2010, reference 01, that concluded the claimant was on a short-term layoff. A telephone hearing was held on May 19, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Greg Bolles participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant eligible for unemployment insurance benefits for the week of March 14, 2010?

FINDINGS OF FACT:

The claimant has been employed as a field specialist since February 1999. He is a 12-month employee who is paid a monthly salary for his work.

As a result of Iowa State University budget cuts, the claimant was required to take six furlough days before June 30, 2010. He was allowed to take the six days consecutively or spread them out. Under the furlough plan, the reduction in pay attributable to the furlough days is prorated and deducted equally from each monthly check for first six months of 2010.

The claimant chose to take one of his furlough days on December 9, 2009, and the remaining five furlough days from March 15 through 19, 2010. The reduction in pay for the furlough days is being prorated equally on his January through June 2010 monthly paychecks.

The claimant filed a weekly claim for unemployment insurance benefits for the week ending March 20, 2010. His weekly benefit amount was determined to be \$388.00. The claimant reported that he had received no wages for the week ending March 20, 2010, and was paid \$388.00 in benefits.

His prorated weekly pay for the week ending March 20, 2010, of \$1,203.31 is over his earning limit of \$403.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for benefits for the week ending March 20, 2010.

Iowa Code § 96.19-38-a & b provide:

"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, 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.

Under this statute, the claimant would not be eligible for unemployment because while he performed no services and worked less than his full-time workweek, he was paid wages for the week that exceed his weekly benefit amount plus \$15.00.

I recognize that the claimant would have been eligible for benefits if the university had deducted the whole amount of pay attributed to the furlough days immediately for one week. But because the pay reduction was allocated over six months, there ends up being no week in which the claimant's wages are less than his weekly benefit amount plus \$15.00. I am convinced, 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. In addition, the claimant was required to take the six furlough days, but he was not required to take them consecutively in one week and he chose the days he was taking off. The claimant is ineligible for benefits for the week ending March 20, 2010.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated March 25 2010, reference 01, is reversed. The claimant is ineligible for benefits for the week ending March 20, 2010. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css