

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA J GIUNTA
Claimant

DRAKE UNIVERSITY
Employer

APPEAL 20A-UI-08033-JE-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated July 1, 2020 (reference 01) that determined she was not able and available for work because she was still employed at the same hours and wages. After due notice was issued, a hearing was held by telephone conference call on August 19, 2020. The claimant participated in the hearing. Debra Wiley, Human Resources Partner, participated in the hearing on behalf of the employer.

ISSUES:

The issues are whether the claimant is eligible for total or partial unemployment benefits, whether the claimant still employed at the same hours and wages, whether the claimant is able and available for work and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time director of community school of music for Drake University on September 1, 2014. She was furloughed from June 29 through July 24, 2020, due to a lack of work.

REASONING AND CONCLUSIONS OF LAW:

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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant was totally unemployed from June 29 through July 24, 2020. So the issue is whether she is able to and available for work.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The employer did not have work available for the claimant and she was furloughed from June 29 through July 24, 2020. The claimant has established she was able and available for work during that time. Therefore, benefits are allowed.

DECISION:

The July 1, 2020, (reference 01) unemployment insurance decision is reversed. The claimant was able to work and available for work from June 29 through July 24, 2020. Regular unemployment insurance benefits funded by the state of Iowa are allowed.



Julie Elder
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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August 25, 2020
Decision Dated and Mailed

je/mh