

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**THOMAS ONEILL**  
Claimant

**APPEAL NO. 21A-UI-01203-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 08/16/20**  
**Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment  
Iowa Code Section 96.7(2)(a)(2) – Employment Liability

**STATEMENT OF THE CASE:**

The claimant, Thomas O'Neill filed a timely appeal from the December 4, 2020, reference 01, decision that denied benefits effective August 16, 2020, based on the deputy's conclusion that the claimant was still employed in the same hours and wages as in the original contract of hire and could not be deemed partially unemployed. After due notice was issued, a hearing was held on February 16, 2021. Claimant participated. Jessica Wade represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, NMRO and KLOG.

**ISSUES:**

Whether the claimant was able to work and available for work during the week of August 16-22, 2020.

Whether the claimant was partially and/or temporarily unemployed during the week of August 16-22, 2020.

Whether the employer's account may be charged for benefits paid for the benefit week that ended August 22, 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 as a .9 FTE polysomnographic technician (sleep technician). The claimant usually works 36 hours per week, 7:00 p.m. to 7:00 a.m., Wednesday evening through Saturday morning. The claimant's base pay is \$35.33 per hour before the additional of a shift differential. The University has in place a budget saving mandatory furlough that requires the claimant to take the equivalent of two weeks off work without pay sometime during the period of July 1, 2020 through June 30, 2021. The University requires that the furlough times be scheduled pursuant to the employing department's needs. The claimant was off work during the week of August 16-22, 2020 pursuant the mandatory furlough and earned no wages that week. The claimant was ready, willing and able to work that week. Prior to the unpaid furlough, the claimant last worked on Friday, August 14, 2020. The claimant returned to

his regular employment on Wednesday, August 26, 2020 at the start of his regular work week. The claimant has continued in the employment since that time. The claimant initially filed a claim for benefits that was deemed effective August 23, 2020. However, the Iowa Workforce Development Benefits Bureau backdated the claim to August 16, 2020. It is unclear why IWD allowed the claim to be backdated. The claimant made a timely weekly claim for the week that ended August 22, 2020 and received \$493.00 in regular benefits for that week. The claimant then discontinued his claim.

## **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 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 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. Iowa Code section 96.7(2)(a)(2)(a).

The claimant was able to work, available for work, but temporarily laid off during the week of August 16-22, 2020. The claimant is eligible for benefits for that week, provided he meets all other eligibility requirements. The employer's account may be charged for the benefits paid to the claimant for the week that ended August 22, 2020.

**DECISION:**

The December 4, 2020, reference 01, decision is reversed. The claimant was able to work, available for work, but temporarily laid off during the week of August 16-22, 2020. The claimant is eligible for benefits for that week, provided he meets all other eligibility requirements. The employer's account may be charged for the benefits paid to the claimant for the week that ended August 22, 2020.



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James E. Timberland  
Administrative Law Judge

March 04, 2021  
Decision Dated and Mailed

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