

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SPENCER CLOUSE**

Claimant

**THE UNIVERSITY OF IOWA**

Employer

**APPEAL 21A-UI-08744-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/20**

**Claimant: Appellant (5R)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant/appellant, Spencer Clouse, filed an appeal from the March 23, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 11, 2021. The hearing was held together with Appeals 21A-UI-08743-jC-T and 21A-UI-08740-JC-T. The claimant participated personally. The employer participated through Jessica Wade. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant totally, partially, or temporarily unemployed effective August 2, 2020?  
Is the claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?  
Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant attended graduate school for this employer from August 2018 until May 14, 2021. He was a full-time student.

In the spring 2020 term, claimant accepted a position with the university that paid his tuition and a monthly stipend of \$1,964.40, in exchange for him to be a graduate teaching assistant part-time, working twenty hours per week. Claimant completed his spring term assignment and returned for the fall 2020 semester. Over the summer, claimant did not expect to work for this employer, but had planned to work for another employer. Due to COVID-19, he did not begin the work as hoped. Claimant was otherwise able and available over the summer.

Effective August 2, 2020, claimant was on summer break between semesters. He resumed classes August 19, 2020 and attended classes while he worked as a graduate teaching assistant. The employer paid his tuition and a monthly stipend of \$1,003.20 in exchange for him to work ten hours each week.

Claimant does not have other based period wages, and the issue of whether his wages earned with this employer while as a student can be included in his base period wages has not yet been addressed by the Benefits Bureau.

Claimant asserted that employer did not contest his receipt of benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue before the administrative law judge is whether the employer's agreement not to contest a claim for unemployment insurance benefits ensures that the claimant will receive unemployment benefits. It does not. The decision about whether a claimant receives or is denied unemployment insurance benefits is not up to the employer or the claimant, but is determined by Iowa Workforce Development applying the facts of the claimant's employment to the Unemployment Security Law as enacted by the state legislature. Whereupon the employer might agree not to contest a claim, that promise, in and of itself, does not guarantee that a claimant will receive unemployment insurance benefits, but only that the employer will not hinder any efforts on the part of the claimant to make a claim for unemployment benefits.

For the reasons that follow, the administrative law judge amends the decision, with no change in effect. Claimant was totally unemployed effective August 2-18, 2020. Claimant was employed under the same hours/wages for which he was hired effective August 19, 2020.

However, the issue of whether his wages earned with this employer while as a student can be included in his base period history must be addressed to determine claimant's eligibility for unemployment insurance benefits.

Iowa Code § 96.19(38)b provides:

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

38. "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.

*August 2, 2020 through August 18, 2020:*

The claimant in this case was totally unemployed effective August 2, 2020 when the semester ended and there was no work with this employer until fall term resumed on August 19, 2020.

*Effective August 19, 2020:*

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

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.

Because the claimant was hired to work only part-time hours and was not guaranteed a set number of hours, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that full-time work will not be regularly available. Thus since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages as contemplated when he was hired, she is not considered partially unemployed. Benefits are denied.

However, the crux of claimant's eligibility for unemployment insurance has not yet been addressed by the Benefits Bureau. The issue of whether the wages the claimant earned by performing service for this educational institution shall/shall not be included in the unemployment insurance claim under Iowa Code section 96.19(18)(g)(6) is remanded to the Benefits Bureau for an initial investigation and decision. The outcome of this investigation will determine whether claimant is in fact monetarily eligible for unemployment insurance benefits. Therefore, this hearing decision is modified in favor of claimant, but with no change in effect at this time.

**DECISION:**

The unemployment insurance decision dated March 23, 2021, (reference 03) is modified with no change in effect. Claimant was totally unemployed and able/available for work effective August 2-18, 2020. Benefits may be allowed, if claimant is otherwise determined to be eligible for benefits. Claimant was not able and available for work effective August 19, 2020 and benefits are denied.

**REMAND:** The issue of whether the wages the claimant earned by performing service for this educational institution shall/shall not be included in the unemployment insurance claim under Iowa Code section 96.19(18)(g)(6)<sup>i</sup> is remanded to the Benefits Bureau for an initial investigation and decision.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

June 28, 2021  
Decision Dated and Mailed

jlb/scn

**NOTE TO CLAIMANT:**

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. More information about how to apply for PUA is available online at:

[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

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<sup>i</sup> Iowa Code section 96.19(18)(g)(6) provides as follows: g. The term “employment” shall not include: (6) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Iowa Administrative Code rule 871-23.20 provides: Employment—student and spouse of student. Wages earned by a student who performs services in the employ of a school, college or university at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) are not covered wages for claim or benefit purposes. Wages earned by an individual who is a full-time employee for a school, college or university whose academic pursuit is incidental to the full-time employment are covered wages. Wages earned by the spouse of such a student in employment with the educational institution attended by the student are not covered wages for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance. This rule is intended to implement Iowa Code section 96.19(18)“g”(6).