

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NORA C MILLER
Claimant

APPEAL 21A-UI-05470-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 05/17/20
Claimant: Appellant (4)

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Nora C Miller, the claimant/appellant filed an appeal from the February 10, 2021, (reference 01) unemployment insurance decision that denied benefits as May 17, 2020. The parties were properly notified about the hearing. A telephone hearing was held on April 23, 2021. Ms. Miller participated and testified. Emily Schott, attorney, represented Ms. Miller. The employer participated through Jessica Wade, human resources business analyst. Official notice was taken of the administrative record. Claimant's Exhibits 1-3 were admitted into evidence.

ISSUES:

Is Ms. Miller totally, partially or temporarily unemployed?
Is Ms. Miller still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Miller began working for the employer in August 2019 as an adjunct assistant professor. She was paid \$9,000 per semester. Her appointment ended on May 15, 2020.

Ms. Miller also worked on a project for the Iowa Writers' Workshop alumni newsletter. She was paid \$20.00 per hour. That job ended on May 16, 2020.

The February 10, 2021, (reference 02) unemployment insurance decision concluded that Ms. Miller is eligible for benefits effective May 31, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Miller is totally unemployed from May 17, 2020 through May 30, 2020.

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 Code § 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.

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.

Ms. Miller is totally unemployed from May 17, 2020 through May 30, 2020 as she did not perform any work and no wages were owed to her. Benefits are allowed during this time period as long as she is otherwise eligible.

DECISION:

The February 10, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Ms. Miller. Ms. Miller is totally unemployed from May 17, 2020 through May 30, 2020. Benefits are allowed provided Ms. Miller is otherwise eligible.



Daniel Zeno
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April 28, 2021
Decision Dated and Mailed

dz/ol