

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCO A BENITEZ
Claimant

APPEAL NO. 10A-UI-11092-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY
Employer

OC: 06/27/10
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 28 2010, reference 01, that concluded the claimant was on a short-term layoff and was eligible for benefits effective July 11, 2010. A telephone hearing was held on September 20, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Greg Bowles participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Is the claimant eligible for unemployment insurance benefits effective July 11, 2010?

FINDINGS OF FACT:

The claimant has been employed as a cook for the employer since February 12, 2007. He is an 11-month employee. This means the employer designates four weeks during the fiscal year based on staffing needs as “dates of nonemployment.” The dates for the 2010-11 fiscal year were July 11-17, December 26, 2010 – January 1, 2011, March 13-19, 2011, and May 15-21. These dates are not set in reference to the times between school years or terms.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 27, 2010. He filed weekly claims for the weeks ending July 3 and 10, 2010, but did not file a weekly claim for the week of nonemployment from July 11-17. He returned to work on July 19, 2010, and knew that he would have work available as of that date.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for benefits for the week ending July 17, 2010.

Iowa Code section 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.

Under this statute, the claimant would be eligible for unemployment because he performed no services and he had no wages payable for that week. A layoff is defined by 871 IAC 24.1(113)a: "A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations." The claimant clearly would fall under this definition.

The claimant, as an 11-month employee, is not subject to the "between-terms" disqualification of Iowa Code section 96.4-5-b, because the claimant is employed between successive academic years or terms—in this case except for one week in July. The dates of nonemployment are not set based on the academic year or term but instead are based on staffing needs. He is also not subject to disqualification under the disqualification during a "established and customary vacation period or holiday recess" found in Iowa Code section 96.4-5-c because the rule require that period or recess to be during a school term. 871 IAC 24.51(8).

The employer emphasized that the claimant was informed that he would be required to take these four weeks off. But unemployment insurance benefits are not reserved to persons who are unemployed unexpectedly. Workers who know or even agree that their work will end or be suspended at a definite time are just as unemployed through no fault their own as the worker laid off without notice. For example, a construction company cannot avoid liability on a claim by telling a worker at the time of hiring that in December they will be laid off until construction work starts again in April. The same principle applies here. The "between terms" disqualification operates as an exception to this principle, but it only applies to cases that fall under the provisions of the law.

Despite this reasoning, the claimant is not eligible for benefits for the week of July 11-17, 2010, for the simple reason that he never filed a weekly claim for that week as required by 871 IAC 24.2(1)g.

DECISION:

The unemployment insurance decision dated July 28 2010, reference 01, is modified in favor of the employer. The claimant is denied benefits for the week ending July 17, 2010, because he failed to file a weekly claim.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs