

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS BULL

Claimant

APPEAL NO. 10A-UI-02060-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY

Employer

OC: 12/27/09

Claimant: Respondent (2R)

Section 96.4-3 – Able and Available for Work

Section 96.19-38-b – Partially Unemployed

STATEMENT OF THE CASE:

Iowa State University filed a timely appeal from a representative's decision dated February 2, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits beginning December 27, 2009 upon a finding that the claimant was unemployed due to a short-term layoff. After due notice, a telephone conference hearing was scheduled for and held on March 23, 2010. The claimant participated personally. The employer participated by Ms. Mallory Schon, Human Resource Specialist II.

ISSUE:

The issue is whether the claimant eligible to receive partial unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Douglas Bull began his employment with Iowa State University on July 1, 1987. The claimant works as a full-time program coordinator and is paid an annual of \$57,509.00.

Mr. Bull opened a claim for unemployment insurance benefits with an effective date of December 27, 2009 based upon four "furlough days" that he elected to take on December 28, 29, 30 and 31, 2009. As a cost saving measure the University requires employees to take the equivalent of four days furlough during the period between December 1, 2009 and June 1, 2010. Employees are allowed to elect the days or partial days that they take as furlough time with the approval of their departments. The University encouraged employees to take furlough days during the holiday break and student classes.

The University does not reduce an employee's pay for the specific days or partial days taken as furlough time within a pay period. Under the University's furlough plan the total amount of an employee's pay for the six month period between December 1, 2009 and June 1, 2010 is

reduced each pay period within the six month time period. Ms. Bull's pay was reduced each pay period during the six months in the amount of 1.5 percent.

REASONING AND CONCLUSIONS OF LAW:

Section 96.19-38-b defines partially unemployed as any week in which, while employed by the individual's regular job, the individual works less than a regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus \$15.00.

In this case the evidence establishes that the claimant's pay is not reduced for individual days or partial days taken as furlough time. Instead the employer through an apparent agreement with the bargaining unit has reduced the claimant's pay during each pay period between December 1, 2009 and June 1, 2010 by 1.5 percent. If the claimant's pay is less than his weekly benefit amount plus \$15.00 the claimant could then be considered to be partially unemployed and eligible for partial unemployment benefits under the Iowa Employment Security Act.

In the case at hand, however, the evidence establishes that Mr. Bull's pay even though reduced 1.5 percent exceeds his weekly benefit amount plus \$15.00. Therefore, the claimant is not eligible to receive partial unemployment insurance benefits based upon the facts of this case and the application of section 96.19-38-b of the Iowa Employment Security Act.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated February 2, 2010, reference 01, is reversed. The claimant not eligible to receive partial unemployment insurance benefits as his earnings for the period in question exceed the claimant's weekly benefit amount plus \$15.00. The issue of whether the claimant is required to repay unemployment insurance benefits is remanded to UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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