

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SPENCER CLOUSE

Claimant

APPEAL 21A-UI-08740-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 05/10/20

Claimant: Appellant (5R)

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, 2020 (reference 01) 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-08744-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 May 10, 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. 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 May 10, 2020. Claimant was able to and available for work effective May 10, 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.

The claimant in this case was totally unemployed effective May 10, 2020 when the semester ended and there was no work with this employer until fall term resumed. 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. The undisputed evidence is claimant was able to and available for work effective May 10, 2020. Claimant has met the requirements of being able and available for work.

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, 2020, (reference 01) is modified with no change in effect. Claimant was totally unemployed and able/available for work effective May 10, 2020. Benefits may be allowed, if claimant is otherwise determined to be eligible for benefits.

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)ⁱ is remanded to the Benefits Bureau for an initial investigation and decision.



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

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

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

ⁱ 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).