

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN HASCALL
Claimant

APPEAL NO: 10A-UI-10587-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY
Employer

OC: 06/13/10
Claimant: Respondent (2/R)

Section 96.19-38 – Eligibility for Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed a representative's July 20, 2010 decision (reference 01) that held the claimant eligible to receive benefits as of June 13, 2010, because he was on a short-term layoff. A telephone hearing was held on September 16, 2010. The claimant participated in the hearing. Greg Bolles, a human resource services specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible to receive unemployment insurance benefits for the week ending June 19, 2010?

FINDINGS OF FACT:

The claimant works as a senior systems analyst. He is a 12-month employee who is paid a monthly salary for his work.

As a result of Iowa State University budget cuts, the claimant was required to take six furlough days before June 30, 2010. He was allowed to take the six days consecutively or spread them out. Under the furlough plan, the reduction in pay attributable to the furlough days was prorated and deducted equally from each monthly check for first six months of 2010.

The claimant took his furlough days June 14 through 18, 2010. The reduction in pay for the furlough days was prorated equally on the January through June 2010 monthly paychecks. This method was used to cushion the blow of having to take furlough days over six months.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 13, 2010. His maximum weekly benefit amount is \$423.00. The claimant filed for and received benefits for the week ending June 19, 2010.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law states 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, or an individual shall be deemed partially unemployed in any week in which, 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 \$15.00. Iowa Code § 96.19-38-a & b.

Under this statute, the claimant is not be eligible to receive unemployment benefits the week ending June 19, 2010 because while he performed no services and worked less than his full-time workweek, he was paid wages for the week that far exceed his weekly benefit amount plus \$15.00.

I recognize that the claimant would have been eligible for benefits if the university had deducted the whole amount of pay attributed to the furlough days immediately for one week. But because the pay reduction was allocated over six months, there ends up being no week in which the claimant's wages are less than his weekly benefit amount plus \$15.00. I am convinced that this pay reduction allocation was not implemented to manipulate the unemployment system, but instead was to cushion the blow of the reduction by spreading it out. The claimant is ineligible to receive benefits for the week ending June 19, 2010.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Claims Section to determine.

DECISION:

The representative's July 20, 2010 decision (reference 01) is reversed. The claimant is denied benefits for the week ending June 19, 2010, because he had excessive earnings. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css