

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL G INMAN
Claimant

APPEAL NO. 20A-UI-04648-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN BROS DIST CO INC
Employer

OC: 04/12/20
Claimant: Respondent (2)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 19, 2020, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on June 11, 2020. Claimant participated personally. Employer participated by Ellen Heuer. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The claimant currently works for Martin Brothers under the same terms and conditions as contemplated in the original contract of hire. After the Covid pandemic struck, employer cut back drivers including the claimant from a five-day workweek to a four-day workweek. For the week ending April 18, 2020, claimant only worked 19 ½ hours. This is because claimant took two days' vacation. There was ongoing work available for claimant during his vacation days and employer did not force claimant to take the vacation.

Claimant has received state unemployment benefits in this matter of \$265.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$600.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

Iowa Code section 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 section 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 Code section 96.3(7) provides, in pertinent part:

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) (a) 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.

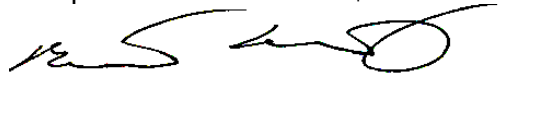
Because the claimant chose to take vacation for a portion of the week ending April 18, 2020, and those vacation days are what put claimant below the threshold that allowed him to be eligible for unemployment benefits, benefits are denied. Employer had sufficient work available for claimant that he would not qualify for benefits, but claimant chose not to work and instead get paid for taking vacation.

Claimant has received state unemployment benefits in this matter of \$265.00 and Federal Pandemic Unemployment Compensation benefits of \$600.00. Said benefit payments are overpayments.

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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The May 19, 2020, reference 01, decision is reversed. The claimant is not partially unemployed for the week ending April 18, 2020 and benefits are denied. Claimant has received state unemployment benefits in this matter of \$265.00 and Federal Pandemic Unemployment Compensation benefits of \$600.00. Said benefit payments are overpayments.



Blair A. Bennett
Administrative Law Judge

June 26, 2020
Decision Dated and Mailed

bab/sam