

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHAEL L PELZ
Claimant

SENECA FOUNDRY INC
Employer

APPEAL NO. 20A-UI-03983-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Appellant (1R)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available
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:

Claimant filed an appeal from a decision of a representative dated May 11, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 29, 2020. Claimant participated personally. Employer participated by Lori Mason. Claimant's exhibit A was admitted into evidence.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Has the claimant been overpaid state unemployment benefits?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a full time quality technician for employer. Claimant took time off from work on FMLA during a period between March 26, 2020 and April 12, 2020. Claimant then returned to work for a period of time until April 20, 2020.

When claimant left work again on April 20, 2020 he gave indication that he needed time off to deal with issues. Claimant was given paperwork (that was never completed and returned) for exceptional personal sick leave and claimant was allowed this leave until May 3, 2020. During this leave, claimant had contact with employer indicating his intent to return after he had his issues under control.

Claimant quit his employment on May 4, 2020 when he did not return after his leave ended.

Claimant stated that he has not established the ability to return to work, and is still working with his doctor, but stated that he is currently filling out applications.

Claimant has received state unemployment benefits in this matter in the amount of \$2364.00.

Claimant has received FPUC unemployment benefits in the amount of \$2400.00.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

This matter will be remanded to the fact finder in this matter for a determination as to the separation issue between the parties.

Claimant has been overpaid state unemployment benefits in this matter in the amount of \$2364.00.

Claimant has been overpaid FPUC unemployment benefits in the amount of \$2400.00.

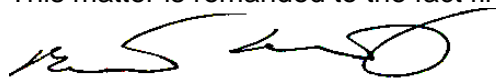
Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular 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 decision of the representative dated May 11, 2020, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective March 29, 2020, until he is able to show that he is able and available for work.

Claimant has been overpaid state unemployment benefits in this matter in the amount of \$2364.00. Claimant has been overpaid FPUC unemployment benefits in the amount of \$2400.00.

This matter is remanded to the fact finder for a determination on the separation issue.



Blair A. Bennett
Administrative Law Judge

June 11, 2020
Decision Dated and Mailed

bab/sam