

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORNELIUS G MITCHELL PETERSON
Claimant

SEVENTH AVENUE INC
Employer

APPEAL 20A-UI-14221-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 7/26/20
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.19(38) – Total, partial and temporary
Iowa Code § 96.7(2)A(2)
Iowa Admin. Code r. 871-24.23(26) – Availability
Iowa Code § 96.3(7) - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the October 27, 2020 (reference 01) unemployment insurance decision that awarded benefits. After due notice was issued, a telephone hearing was held on January 8, 2021. Claimant did not participate. The employer participated through Teah Shirk. Employer's Exhibit 1 is admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Is the claimant able to work and available for work effective July 26, 2020?
Is claimant totally, partially and temporarily unemployed?
Is claimant employed at the same hours and wages?
Is there an overpayment of benefits?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Employer hired claimant on December 3, 2019 as a forklift operator. Claimant worked on a part time basis. May 11, 2020 was the last day claimant worked. Claimant was placed on call on May 11, 2020. The employer made multiple attempts to contact claimant to return to work. Claimant never responded. The employer called claimant on June 18, 2020 and asked him to work on June 19, 2020. Claimant did not report to work. On July 14, 2020 claimant was contacted to work on July 15, 2020. Claimant did not report to work. On August 14, 2020, employer called claimant to work August 15, 2020. Claimant did not report to work. On August 17, 2020, claimant was called to work on August 18, 2020. Claimant did not report to work. Employer called claimant for the last time on August 25, 2020 to work on August 26, 2020. Claimant did not report to work. There was no communication between

employer and claimant after that date. Claimant received benefits of \$2,025.35 for the weeks between October 10, 2020 and January 2, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work effective July 26, 2020.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Admin. Code r. 871-24.23(16) provides:

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

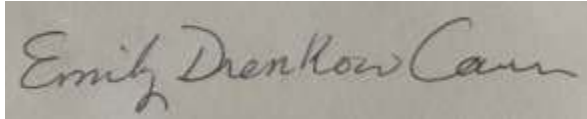
(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Because claimant has not established he was able to and available for work beginning July 26, 2020, he is not eligible for benefits during that time period. Employer made several offers to claimant for work. Claimant did not report to work. Claimant provided no evidence or testimony regarding his failure to report to work. Accordingly, benefits are denied.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits of \$2,025.35 pursuant to Iowa Code Section 96.3(7).

DECISION:

The October 27, 2020 (reference 01) decision is reversed. The claimant has not established a good cause reason for failing to report as directed. Benefits are denied. The claimant has been overpaid unemployment insurance benefits of \$2,025.35 which he was not entitled. Those benefits must be recovered in accordance with Iowa law.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", written in dark ink on a light-colored background.

Emily Drenkow Carr
Administrative Law Judge

January 28, 2021
Decision Dated and Mailed

ed/scn