

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**PAUL F GREEN**  
Claimant

**EXPRESS SERVICES INC**  
Employer

**APPEAL 21A-UI-07783-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/02/20**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On March 17, 2021, Paul Green (claimant/appellant) filed an appeal from the March 11, 2021 (reference 02) unemployment insurance decision that denied benefits as of June 7, 2020 based on a finding claimant was unable to perform work at that time.

A telephone hearing was held on May 26, 2021. The parties were properly notified of the hearing. The claimant participated personally. Express Services Inc. (employer/respondent) did not register a number for the hearing or participate.

At that time, the notice of hearing did not properly list the issue of whether claimant was able and available for work, which was the basis of the denial. It instead listed the issue of whether the separation from employment was disqualifying. The separation issue was addressed in a decision dated June 10, 2021. See 21A-UI-07784-AD-T.

Claimant was willing to waive notice and proceed on the issue of whether he was able and available for work. However, because the employer was not present to waive notice as well, the administrative law judge could not issue a decision on this matter consistent with applicable law and rules regarding due process and notice.

The hearing was therefore rescheduled for June 25, 2021 at 2 p.m. The parties were properly notified of the hearing. The claimant participated personally. Employer did not register a number for the hearing or participate. Claimant's Exhibits 1-4 were admitted. The record in 21A-UI-07784-AD-T was incorporated. Official notice was taken of the administrative record.

**ISSUES:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on May 4, 2020. At that time he was assigned to full-time work at Heartland Ag in Ames. The last day claimant worked on the job was June 12, 2020. Claimant left employment at that time due to his doctor recommending a surgical procedure. He informed employer of the need for his leaving well in advance of it and subsequently kept it advised of his return status. The employer consented to the absence. He was released to return to work on November 9, 2020. He promptly informed employer of his release and attempted to return to work with employer at that time. However, no comparable work was available. Claimant continued to be able and available for work during this time and to search for work. He was hired elsewhere on February 15, 2021.

The administrative record shows claimant reopened his claim on December 6, 2020 and January 3, 2021. However, the administrative record does not show that weekly continued claims for benefits were filed after the week ending May 9, 2020. Claimant credibly testified that he did not file weekly continued claims between May 9 and December 6, 2020 but did file weekly continued claims beginning in early December 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the March 11, 2021 (reference 02) unemployment insurance decision that denied benefits as of June 7, 2020 based on a finding claimant was unable to perform work at that time is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth below.

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".

The administrative law judge finds claimant was not able and available for work from the benefit week ending May 9, 2020 and continuing through the benefit week ending November 7, 2020. This is because claimant was either working to such an extent as to be removed from the labor market or was unable to work due to a medical condition. Claimant was able and available for work from the benefit week ending November 14, 2020 and continuing until he began full-time work elsewhere with the benefit week ending February 20, 2021. He is therefore eligible for benefits during this period, provided he is not otherwise disqualified or ineligible.

The administrative record shows claimant reopened his claim on December 6, 2020 and January 3, 2021. However, the administrative record does not show that weekly continued claims for benefits were filed after the week ending May 9, 2020. Claimant credibly testified that he did not file weekly continued claims between May 9 and December 6, 2020 but did file weekly continued claims beginning in early December 2020. This matter is REMANDED to the Department to contact claimant for re-entry of back weeks consistent with this decision.

**DECISION:**

The March 11, 2021 (reference 02) unemployment insurance decision that denied benefits as of June 7, 2020 based on a finding claimant was unable to perform work at that time is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth above.

**REMAND:**

This matter is REMANDED to the Department to contact claimant for re-entry of back weeks consistent with this decision.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

July 19, 2021  
Decision Dated and Mailed

abd/lj

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.