

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAM M SUKHRAM
Claimant

IOWA SLEEP DISORDERS CENTER PC
Employer

APPEAL 20A-UI-09454-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (5)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 3, 2020 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits because he was working the same hours and earning the same wages as in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on September 24, 2020. The claimant, Sham M. Sukhram, participated personally. The employer, Iowa Sleep Disorders Center PC, participated through witness Jill Stevens. Barb Zorn observed on behalf of the employer. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
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 started working for this employer on June 3, 2019 as a full-time DME coordinator. He is still employed to date. Claimant's normal working schedule is Monday through Friday each week from 8:00 am to 4:30 p.m. His direct supervisor is Jill Stevens.

Claimant filed an original claim for unemployment insurance benefits effective May 17, 2020. He filed weekly-continued claims for benefits from May 17, 2020 through July 25, 2020. He received unemployment insurance benefits for the week-ending May 23, 2020, May 30, 2020, June 20, 2020, June 27, 2020, and July 18, 2020 based upon the gross wages he reported when making his weekly-continued claims for benefits. When he filed his weekly-continued claims for benefits he incorrectly reported gross wages earned and failed to report paid leave he earned when he was off of work.

Claimant was off of work on May 21, 2020 and May 22, 2020 in order to have his daughter tested for COVID 19 and to await the test results. Claimant worked the majority of the work week of May 17, 2020 through May 23, 2020 as his normal work schedule.

Claimant was off of work on June 11, 2020 for a few hours in order to have himself tested for COVID 19. He worked the majority of the work week during his normal scheduled hours for the week of June 7, 2020 through June 13, 2020.

Claimant was off of work July 13, 2020 and July 17, 2020 for vacation days. He worked the majority of his regular schedule for the benefit week of July 12, 2020 through July 18, 2020. During all other weeks, the claimant worked his normal full-time work schedule. Work was available for the dates that claimant was off of work if he would have been able to and available for work with his regular employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 section 96.19, subsection 38, paragraph "b", subparagraph (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 § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 Admin. Code r. 871-24.23(23) provides:

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

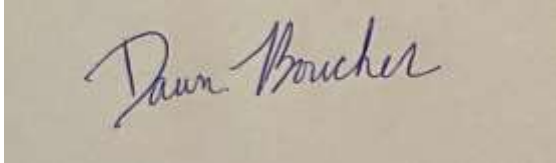
(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

For every weekly-continued claim the claimant filed from May 17, 2020 through July 25, 2020 he has worked the majority of each work week. The only reason the claimant was paid benefits was because he incorrectly reported his gross wages earned when filing. As such, he has been working to such a degree that removes him from the labor market pursuant to Iowa Admin. Code r. 871-24.23(23). As such, benefits are denied effective May 17, 2020 due to the claimant failing to be able to and available for work.

DECISION:

The August 3, 2020 (reference 02) decision is modified with no change in effect. Claimant is working enough hours to be considered employed for each weekly-continued claim he has filed. Benefits are denied effective May 17, 2020 and continuing due to his failure to be able to and available for work.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

September 28, 2020
Decision Dated and Mailed

db/sam

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic

Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.

- **You will need to apply for PUA to determine your eligibility under the program.**

For additional information on how to apply for PUA go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>.

- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:

<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.