

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUGLAS E WADSLEY
Claimant

GREAT LAKES CONCRETE INC
Employer

APPEAL 20A-UI-01049-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Appellant (5)

Iowa Code § 96.4(3) – Able and available
Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO
Iowa Code § 96.5(5) – Payment – Severance pay, disability, pension

STATEMENT OF THE CASE:

On February 5, 2020, Douglas Wadsley (claimant/appellant) filed a timely appeal from the February 3, 2020 (reference 02) unemployment insurance decision that determined claimant was not eligible for benefits for the week ending December 21, 2019 because he received vacation pay, paid time off, holiday pay, severance pay, or separation pay which equaled or exceeded the weekly benefit amount for vacation pay, paid time off, severance pay, or separation pay or exceeded the weekly benefit amount plus \$15.00 for holiday pay.

After due notice was issued, a telephone conference hearing was held on February 20, 2020. Claimant participated personally. Great Lakes Concrete Inc. (employer/respondent) participated through Bookkeeper Dawn Weuve.

ISSUES:

Was the claimant able to and available for work?
Did the claimant receive vacation pay or PTO at separation?
Is that amount deductible from benefits, and if so, for what period?

FINDINGS OF FACT:

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

Claimant is temporarily laid off from work for the winter. The last full week he worked was during the week ending December 21, 2019. That week he worked 36.25 hours at a rate of \$20/hour, for gross pay of \$725.00. Those wages were not vacation, paid time off, holiday, severance, or separation pay. Claimant's weekly benefit amount is \$518.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the February 3, 2020 (reference 02) unemployment insurance decision that determined claimant was not eligible for benefits for the week ending December 21,

2019 is MODIFIED with no change in effect. Claimant is eligible for benefits effective December 22, 2019, provided he meets all other eligibility requirements.

Iowa Code § 96.4 provides in relevant part:

Required findings.

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 Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Claimant was not eligible for benefits for the week ending December 21, 2019. However, the reason for ineligibility was not because he received vacation pay, paid time off, holiday pay, severance pay, or separation pay which equaled or exceeded the weekly benefit amount for vacation pay, paid time off, severance pay, or separation pay or exceeded the weekly benefit amount plus \$15.00 for holiday pay. Claimant was not eligible for benefits for that week simply because he was still working for employer and earning wages during that timeframe. As such, claimant was not able to and available for work until December 22, 2019.

DECISION:

The February 3, 2020 (reference 02) unemployment insurance decision that determined claimant was not eligible for benefits for the week ending December 21, 2019 is MODIFIED with no change in effect. Claimant is eligible for benefits effective December 22, 2019, provided he meets all other eligibility requirements.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn