

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONNY A NUNNALLY
Claimant

APPEAL 20A-UI-15971-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ART PAPE TRANSFER INC.
Employer

**OC: 04/12/20
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Ronny A. Nunnally, filed an appeal from the November 5, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated he was ineligible for benefits effective July 5, 2020 because he was working the same hours and wages for which he was hired. The parties were properly notified about the hearing. A telephone hearing was held on February 1, 2021. The hearing was held together with Appeal 20A-15970-JC-T. and Appeal 20A-15972-JC-T. The claimant participated personally. Dr. Annette Geary, testified for claimant. The employer, Art Pape Transfer Inc., participated through Cody McClain. Mitch Kemp testified. Russell Masartis attended as an observer.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective July 5, 2020?
Does the claimant meet the definition of being considered partially unemployed?
If so, is the employer’s account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a driver possessing a Class A CDL license. Effective April 13, 2020 through July 4, 2020, claimant requested and took a personal leave of absence at his medical professional’s advice. Claimant returned to work on July 6, 2020 and worked full-time, at a rate of pay of \$21.00 per hour until his separation on September 28, 2020.

The issue of claimant's eligibility from April 12, 2020 through July 4, 2020 is addressed in Appeal 20A-UI-15970-JC-T, and claimant's September 28, 2020 separation is addressed in Appeal 20A-UI-15972-JC-T.

REASONING AND CONCLUSIONS OF LAW:

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 Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer

or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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 96.1A, 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. 871-24.23(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.

In this case, claimant performed full-time work from July 6, 2020 until his September 28, 2020 separation. He therefore does not meet the eligibility requirements for unemployment insurance benefits. Benefits are denied.

The issue of claimant's eligibility from April 12, 2020 through July 4, 2020 is addressed in Appeal 20A-UI-15970-JC-T and claimant's September 28, 2020 separation is addressed in Appeal 20A-UI-15972-JC-T.

DECISION:

The unemployment insurance decision dated November 5, 2020, (reference 02) is affirmed. The claimant is not able and available for work effective July 5, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 16, 2021
Decision Dated and Mailed

jlb/scn

Note to Claimant: This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of 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, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at

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

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>