

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HERBERT J JOHNSON
Claimant

**INVESTIGATIONS & RECOVERY
IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 20A-UI-12932-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/03/20
Claimant: Appellant (4)**

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23 – Restrictions on Availability

STATEMENT OF THE CASE:

The claimant/appellant, Herbert Johnson, filed an appeal from the October 19, 2020 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded he was ineligible to receive unemployment insurance benefits as of April 26, 2020, because he did not meet the eligibility requirements of the Care Act of 2020.

The parties were properly notified of the hearing. A telephone hearing was held on December 15, 2020. The claimant participated personally. Daniel Noonan, participated on behalf of IWD. IWD Exhibit One was admitted into evidence. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. 20A-DUA-00736.S1 and 20A-UI-12932.S1 were heard at the same time. The administrative law judge took official notice of the administrative file.

ISSUES:

The issues are whether the claimant was able and available for work and whether the claimant’s employability restrictions meet the eligibility guidelines of the Cares Act.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of May 3, 2020. The agency issued a decision dated July 17, 2020, reference 03, denying state unemployment insurance benefits as of May 3, 2020, because he was not able and available for work. The claimant told the employer he “could not work until COVID was over”. (Exhibit One, 6-1) The decision stated, “If the circumstances have changed and you believe the disqualification can be removed, you should contact your local workforce development center between 9 a.m. and 3 p.m. and request that it be removed.” (Exhibit One, 3-1)

The claimant appealed that decision. After speaking to department representatives, the claimant sent the Appeals Bureau a written withdrawal of his appeal. On September 15, 2020,

Administrative Law Judge Dawn Boucher issued a decision, 20A-UI-09648-DB, approving the claimant's request for withdrawal and affirming the decision. She affirmed the decision finding the claimant ineligible for unemployment insurance benefits because he was not able and available for work. (Exhibit One, 4-1, 2, and 3)

On or about September 1, 2020, the claimant felt he could resume working without fear. He took employment with Katecho in Des Moines, Iowa, for one week or more before the company stopped staffing his shift.

In a decision dated September 8, 2020, reference 05, the agency granted the claimant Pandemic Unemployment Assistance (PUA) benefits. The claimant told a workforce representative he stopped working because he was fearful to work during the COVID-19 pandemic at his previous employer. (Exhibit One, 1-1 and 7-2)

After the decision was issued, the agency reviewed the record in the case. It looked at the claimant's statements and 20A-UI-09648-DB. The agency issued a decision dated October 19, 2020, reference 04, denying PUA benefits as of April 26, 2020, because the claimant did not meet the eligibility requirements of the Cares Act of 2020. (Exhibit One, 2-1)

A November 18, 2020, reference 07, decision was issued finding the claimant overpaid \$7,200.00 in Federal Pandemic Unemployment Compensation for the ten-week period ending May 3, 2020. (Exhibit One, 11-2)

A November 18, 2020, decision was issued finding the claimant overpaid \$542.00 in Pandemic Unemployment Assistance for the two-week period ending May 5, 2020. (Exhibit One, 11-3)

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.23(16) and (23) provide:

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.

(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.

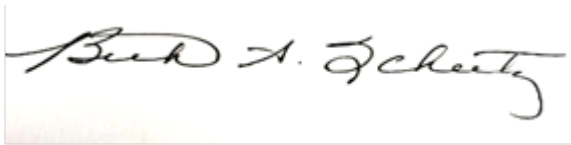
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). A worker is considered to be unavailable for work when an employee limits working hours for a particular reason. In this case, the claimant limited working hours until the pandemic is over. This makes the claimant unavailable for work. In addition, it makes him ineligible for Pandemic Unemployment Assistance. The ineligibility extends through the week ending August 29, 2020.

The claimant felt comfortable to start working again on or about August 30, 2020. He was working for Katecho for the week ending September 5, 2020. At that time, the disqualification for limiting his hours can be removed. The claimant was disqualified for a different reason during the week ending September 5, 2020. He was not available for other work for the week ending September 5, 2020, because he was working for Katecho.

As of September 6, 2020, the claimant is considered to be eligible to receive state unemployment insurance benefits, so long as he meets all other requirements. This eligibility to receive state unemployment insurance benefits means he is not eligible to receive Pandemic Unemployment Assistance benefits.

DECISION:

The October 19, 2020, (reference 04) unemployment insurance decision is modified in favor of the appellant. The claimant is able and available for work as of September 6, 2020. State unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

A handwritten signature in black ink, reading "Beth A. Scheetz", is written over a horizontal line.

Beth A. Scheetz
Administrative Law Judge

December 28, 2020
Decision Dated and Mailed

bas/scn