

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

REAGAN N NKASA
Claimant

AEROTEK INC
Employer

APPEAL NO. 20A-UI-06915-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Respondent (2/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 16, 2020, reference 02, decision that allowed benefits to the claimant effective April 12, 2020, provided he was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work and available for work, but that the employer was not providing the same employment as existed earlier in the employment. After due notice was issued, a hearing was held on July 30, 2020. Claimant Reagan Nkasa did not provide a telephone number for the appeal hearing and did not participate. Chelsea Spear, Account Recruiting Manager, represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant has been able to work and available for work since April 12, 2020.
Whether the claimant has been temporarily or partially unemployed from this employer since April 12, 2020.
Whether the claimant was overpaid regular benefits.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began his employment with Aerotek in January 2020 and last performed work for the employer in February 2020. The employer had placed the claimant in a full-time work assignment at Williamsburg Manufacturing. The employer continued to have full-time work for the claimant in the assignment at the time the claimant ceased appearing for the assignment. The employer was unable to make contact with the claimant after the claimant ceased appearing for work in the assignment.

The claimant established an original claim for benefits that was effective April 12, 2020. Aerotek, Inc. is not a base period employer in connection with the claim year that began for the

claimant on April 12, 2020. Iowa Workforce Development set the weekly benefit amount at \$414.00. IWD paid \$414.00 in regular benefits to the claimant for each of the 15 weeks between April 12, 2020 and July 25, 2020. The regular benefits totaled \$6,210.00. IWD also paid \$600.00 in Federal Pandemic Unemployment Compensation to the claimant for each of the 15 weeks between April 12, 2020 and July 25, 2020. The FPUC benefits totaled \$9,000.00. For each claim week, the claimant has reported to IWD that he is able to work and available for work, that he has not refused any offers of employment, and that he had no wages, vacation or holiday pay.

REASONING AND CONCLUSIONS OF LAW:

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".

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.

Iowa Code section 96.19(38) provides:

"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.

The evidence in the record fails to establish that the claimant has met the able and available requirements since he established his claim for benefits. The claimant did not participate in the appeal hearing and did not present any evidence to meet his burden or showing that he was physically and mentally able to work, available for work or work referrals, or actively and earnestly seeking new employment during the weeks for which he claimed benefits.

The evidence in the record establishes that the claimant has not been temporarily or partially unemployed from this employer since he filed his claim for benefits. The employer continued to have full-time work for the claimant at the time the claimant ceased appearing and ceased contact in February 2020. The employer has continued to have full-time employment available for the claimant.

Based on the able and available disqualification, benefits are denied effective April 12, 2020. The able and available disqualification continued at the time of the July 30, 2020 appeal hearing. Based also on the conclusion that the claimant has not been temporarily or partially unemployed from this employer since April 12, 2020, benefits are denied effective April 12, 2020 and the disqualification continued at the time of the July 30, 2020 appeal hearing.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

Aerotek, Inc. is not a base period employer for purposes of the claim year that began on April 12, 2020 and, therefore, is not subject to charges for benefits in connection with the current claim year. The employer account of Aerotek will not be charged for the benefits paid to the claimant for the period of April 12, 2020 through July 25, 2020.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because this decision disqualifies the claimant for regular benefits for the period of April 12, 2020 through July 25, 2020, the benefits the claimant received for that period constitute an overpayment of benefits that the claimant must repay. The claimant is overpaid \$6,210.00 in regular benefits for 15 weeks between April 12, 2020 and July 25, 2020.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, the claimant is also disqualified from receiving Federal Pandemic Unemployment

Compensation (FPUC). The \$9,000.00 in FPUC benefits the claimant received for the 15 weeks between April 12, 2020 and July 25, 2020 constitute an overpayment of benefits. Claimant is required to repay those benefits.

DECISION:

The June 16, 2020, reference 02, is reversed. The claimant has not demonstrated that he has been able and available for work during any benefit week since establishing the original claim for benefits that was effective April 12, 2020. The claimant has not been temporarily or partially unemployed from this employer at any point since April 12, 2020. Benefits are denied effective April 12, 2020. The disqualification continued at the time of the July 30, 2020 appeal hearing. The employer is not a base period employer. The employer's account shall not be charged for benefits for the period of April 12, 2020 through July 25, 2020. The claimant is overpaid \$6,210.00 in regular benefits for 15 weeks between April 12, 2020 and July 25, 2020. The claimant is overpaid \$9,000.00 in FPUC benefits for 15 weeks between April 12, 2020 and July 25, 2020. The claimant must repay the overpaid regular and FPUC benefits.

This matter is remanded to the Benefits Bureau for adjudication of the employment separation.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance 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. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, 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>.



James E. Timberland
Administrative Law Judge

August 4, 2020
Decision Dated and Mailed

jet/scn