

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AARON D MONTGOMERY**  
Claimant

**PARCO LTD**  
Employer

**APPEAL 20A-UI-12684-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 4/19/20**  
**Claimant: Respondent (1R)**

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Iowa Code § 96.7(2)A(2) –  
Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Able and Available  
PL 116-136, SEC. 2104(B) – Federal Pandemic Unemployment Insurance  
IAC 871-24.23(26) - Able and Available Disqualification

**STATEMENT OF THE CASE:**

The employer/respondent filed an appeal from the October 9, 2020, (reference 01) unemployment insurance decision that awarded benefits based on claimant's being able and available to work. The parties were properly notified of the hearing. A telephone hearing was held on November 23, 2020. The claimant/appellant, Aaron Montgomery, participated. Raechia Williamson testified on behalf of the claimant. The employer, Parco LTD, participated through Juliet Diaz. Employer's Exhibits A and B were admitted.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant began employment with Parco beginning October 8, 2019. Claimant worked as a crew member on a part-time basis. Claimant's supervisor was Mr. Deweese. Claimant tended to work the closing shift from 8:00 PM to 1:30 AM. Claimant filed for benefits on April 19, 2020. Claimant was taken off the schedule for a period of time beginning April 19, 2020. Claimant returned to work but is no longer employed with this company. Claimant missed all of his shifts from October 26, 2020 forward.

**ISSUES:**

Was claimant able and available to work? Was claimant totally and partially unemployed? Should there be a recovery of overpayment? Does claimant qualify for federal pandemic unemployment insurance?

## REASONING AND CONCLUSION:

For the reasons that follow, the administrative law judge concludes that the claimant is totally unemployed effective April 19, 2020 and is able to and available for work. Benefits are allowed.

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", 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 Code § 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.

Iowa Admin. Code r. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(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.

...

(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

An employee is partially unemployed and does not have to be able to work, available for work, and actively and earnestly seeking work, if during any week they work less than their regular full-time hours and earn less than their weekly benefit amount plus fifteen dollars or if they are laid off due to a lack of work for no more than four weeks.

As such, the claimant must remain able to work, available for work, and actively and earnestly seeking work to remain eligible for benefits. An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. There was some question as to whether claimant was out of the geographical area while off work. While claimant admitted he has travelled out of the geographical region on occasion, there is no indication he has actually turned down work or otherwise taken steps to limit his availability for work because he had travelled out of town. The evidence presented indicates the claimant is able to and available for work. Benefits are allowed effective April 19, 2020.

The issue of whether the claimant's separation qualifies him for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

As claimant had been receiving benefits, pending a determination on his appeals, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since this decision awarded benefits the claimant was not overpaid unemployment insurance benefits.

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...

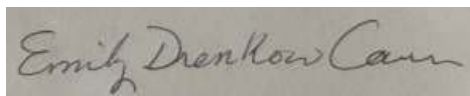
Here, the claimant is awarded from receiving regular unemployment insurance (UI) benefits. Accordingly, claimant is not disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). No benefit amount must be repaid.

**DECISION:**

The October 9, 2020, reference 01, unemployment insurance decision is affirmed. The claimant was not partially, but totally, unemployed and able to and available for work effective April 19, 2020. Benefits are allowed.

**REMANDS:**

The issue of whether the claimant's separation from employment qualifies him for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.



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Emily Drenkow Carr  
Administrative Law Judge

December 11, 2020  
Decision Dated and Mailed

ed/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits 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 under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received