

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAUL AVALOS
Claimant

ASPLUNDH TREE EXPERT LLC
Employer

APPEAL 20A-UI-06235-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (4)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Raul Avalos (claimant) appealed a representative's June 8, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of April 5, 2020, because a leave of absence was granted by Asplundh Tree Expert (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 20, 2020. The claimant participated personally and by Rusty McCuen, Assistant Business Manager. The employer participated by Scott Richter, Supervisor. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work, whether the claimant was overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in August 2014. He is presently working as a full-time foreman. The claimant's wife scheduled a trip to Mexico and the claimant was to care for the children. The school and daycare closed due to Covid-19 and the claimant did not have childcare. He requested and the employer granted time off from March 20, 2020, through April 19, 2020, to care for his children. Work was available from March 20, 2020, to April 19, 2020.

The claimant was planning to return to work on April 20, 2020, but the employer placed the claimant and others on a layoff due to Covid-19. The employer returned employees to work on May 26, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. His weekly benefit amount was determined to be \$545.00. The claimant received no unemployment insurance benefits or Federal Pandemic Unemployment Compensation after April 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

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). When an employee is spending working hours caring for children, he is considered to be unavailable for work. The claimant did not have childcare. He is considered to be unavailable for work.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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). When an employee is spending working hours caring for children, he is considered to be unavailable for work. The claimant did not have childcare. He is considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant is not able and available for work for the three-week period ending April 25, 2020.

For the four-week period ending May 23, 2020, the claimant was temporarily unemployed to a lack of work by the employer. The claimant was able and available for work during this period. Benefits are allowed for the four-week period ending May 23, 2020, provided the claimant is otherwise eligible.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law for the three-week period ending April 25, 2020, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

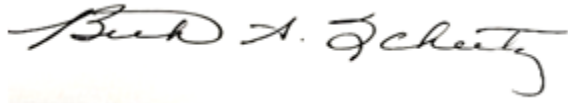
The claimant received no unemployment insurance benefits or Federal Pandemic Unemployment Compensation and therefore, has not been overpaid those benefits.

DECISION:

The representative's June 8, 2020, decision (reference 01) is modified in favor of the appellant. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits for work for the three-week period ending April 25, 2020. The claimant was able and available for work and benefits are allowed for the four-week period ending May 23, 2020, provided the claimant is otherwise eligible.

The claimant received no unemployment insurance benefits or Federal Pandemic Unemployment Compensation and therefore, has not been overpaid those benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits for the three-week period ending April 25, 2020. 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>.



Beth A. Scheetz
Administrative Law Judge

July 28, 2020
Decision Dated and Mailed

bas/sam