

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY D ARMSTEAD
Claimant

APPEAL 20A-UI-12310-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 06/28/20
Claimant: Respondent (4/R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Express Services (employer) appealed a representative's September 28, 2020, decision (reference 01) that concluded Timothy Armstead (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 4, 2020. The claimant participated personally. The employer participated by Leanne McKeown, Administrative Recruiter. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

The issue is also whether the claimant is 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 employer is a temporary agency. The claimant was assigned to work at Klein Tools Corporation from May 1, 2014, to June 12, 2020, as a full-time temporary receiving and packaging person. There was a separation from employment after June 12, 2020, that centered on an attendance issue.

The mother of the babysitter where the claimant's son went to daycare tested positive for Covid-19. The claimant quarantined from June 28, 2020, through July 15, 2020, three weeks. He worked off and on for other temporary agencies after July 15, 2020. The claimant had few facts

about his employment history. He remembered working three days in twenty-two weeks. When the claimant filed his weekly claims, four weeks of twenty-two weeks the claimant reported some wages.

The claimant filed for unemployment insurance benefits with an effective date of June 28, 2020. His weekly benefit amount was determined to be \$309.00. The claimant received benefits from June 28, 2020, to the week ending November 28, 2020. This is a total of \$6,400.00 in state unemployment insurance benefits after the separation from employment. He also received \$2,400.00 in Federal Pandemic Unemployment Compensation for the four-week period ending July 25, 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.

The claimant was totally unemployed with the employer after June 9, 2020. In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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 a

person is unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant had been in contact with another person who was diagnosed with Covid-19. To prevent the spread of a deadly virus, the claimant needed to quarantine. He was not able and available for work during that period. The claimant is disqualified from receiving unemployment insurance benefits from June 28, 2020, through July 18, 2020.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

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.

The claimant received \$927.00 in state unemployment insurance benefits for the three-week period ending July 18, 2020. This was during the period of time the claimant has been determined to be ineligible to receive benefits. The claimant is overpaid \$927.00 in state unemployment insurance benefits.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation.

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...

The claimant has received \$1,800.00 in Federal Pandemic Unemployment Compensation for the three-week period ending July 18, 2020. The claimant has been disqualified from receiving regular unemployment insurance benefits for the three-week period ending July 18, 2020. Therefore, he has been overpaid Federal Pandemic Unemployment Compensation in the amount of \$1,800.00 for the three-week period ending July 18, 2020.

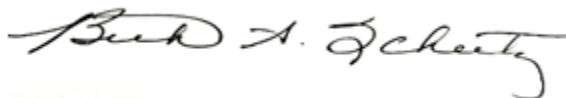
DECISION:

The September 28, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work and available for work for the three-week period ending July 18, 2020. Benefits are denied for that period.

The claimant is overpaid \$927.00 in state unemployment insurance benefits and \$1,800.00 in Federal Pandemic Unemployment Compensation.

The issue of the claimant's separation from employment is remanded for determination.

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. 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
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December 11, 2020
Decision Dated and Mailed

bas/mh