

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEPHEN M TREANOR
Claimant

APPEAL NO. 20A-UI-06766-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN PRINTERS INC
Employer

OC: 03/22/20
Claimant: Appellant (6/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Administrative Code rule 871-26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

Stephen Treanor filed a late appeal from the May 21, 2020 (reference 01) decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that Mr. Treanor was not partially unemployed within the meaning of the law. A hearing was scheduled for July 29, 2020. Mr. Treanor appeared for the hearing. The employer did not provide a telephone number for the hearing and did not appear. Prior to the presentation of evidence, Mr. Treanor requested the appeal be withdrawn.

FINDINGS OF FACT:

Stephen Treanor is the appellant in this matter. Mr. Treanor established an original claim for benefits that was effective March 22, 2020. After Mr. Treanor established the March 22, 2020 original claim, he did not make any weekly claims prior to establishing an additional claim for benefits that was effective June 7, 2020. In the absence of weekly claims, Mr. Treanor's claim lapsed. IWD records reflect that Mr. Treanor returned to the employment subsequent to filing the March 22, 2020 original claim for benefits. On May 21, 2020, Iowa Workforce Development mailed a reference 01, decision to Mr. Treanor. The decision denied benefits effective March 22, 2020, based on the deputy's conclusion that Mr. Treanor was not partially unemployed within the meaning of the law. In connection with entry of the May 21, 2020, reference 01, decision, an Agency representative locked Mr. Treanor's claim on May 20, 2020 and made the lock effective March 22, 2020. Mr. Treanor concedes that the appeal he filed in the present matter, concerning the May 21, 2020 (reference 01) decision concerning the period beginning March 22, 2020, would not be a timely appeal.

On June 7, 2020, Mr. Treanor established an additional claim for benefits. IWD did not send a new notice of claim to the employer to begin the process of determining whether Mr. Treanor was able to work, available for work, temporarily laid off and/or partially laid off during the new and distinct period that began June 7, 2020. The new period of unemployment occurred 12 weeks after the period addressed in the May 21, 2020 (reference 01) decision, and at the end of a 12-week period wherein there were no weekly claims. The claimant asserts in his appeal

letter that a temporary layoff prompted the additional claim for benefits that was effective June 7, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-26.8(1) provides:

- (1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of an administrative law judge or the manager or chief administrative law judge of the appeals bureau. Requests for withdrawal may be made in writing or orally, provided the oral request is tape-recorded by the presiding officer.

An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor.

The administrative law judge concludes that the appealing party's request to withdraw the appeal should be approved.

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.

An individual shall be deemed *partially unemployed* in any week in which, 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. Iowa Code section 96.19(38)(b).

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 Code section 96.19(38)(c).

IWD should have sent a new notice of claim to the employer to begin the process of determining the claimant's eligibility for benefits, and the employer's liability for benefits, in connection with the additional claim that was effective June 7, 2020. The able and available determination, and partial/temporary employment determination, is supposed to involve a week-by-week review to determine whether the claimant met those eligibility requirements during the particular week in question. In the absence of weekly claims for the 12-week period of March 22, 2020 through June 6, 2020, there is no legal basis for concluding that the May 21, 2020 (reference 01) disqualification decision regarding the period beginning March 22, 2020 would be binding on the claimant in connection with the separate and distinct eligibility period that began on June 7, 2020.

The claimant's request to withdraw the late appeal from the May 21, 2020 (reference 01) decision is approved.

This matter will be remanded to the Benefits Bureau so that a notice of claim may be sent to the employer regarding the additional claim that was effective June 7, 2020. If the employer submits a timely protest, a fact-finding interview shall be scheduled regarding the additional claim for benefits that was effective June 7, 2020, and an appealable decision shall be entered. Seeing no basis in the Agency's records for locking the claim while that process unfolds, the administrative law judge has unlocked the claim for the period beginning June 7, 2020. The claimant understands that if the determination regarding his eligibility for benefits for the period beginning June 7, 2020 results in a determination that he is not eligible for benefits for that period, he will be required to repay any benefits deemed to be overpaid benefits.

DECISION:

The claimant's request to withdraw the appeal is approved. The May 21, 2020 (reference 01) decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that claimant was not partially unemployed within the meaning of the law effective March 22, 2020 remains in place, but is moot and without effect regarding the separate and distinct eligibility period that began June 7, 2020.

This matter is remanded to the Benefits Bureau so that a notice of claim may be sent to the employer regarding the additional claim that was effective June 7, 2020. If the employer submits a timely protest, a fact-finding interview shall be scheduled regarding the additional claim for benefits that was effective June 7, 2020, and an appealable decision shall be entered.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

August 5, 2020
Decision Dated and Mailed

jet/sam