

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MICHAEL C LEWIS**  
Claimant

**APPEAL NO. 20A-UI-03476-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALANIZ LLC**  
Employer

**OC: 06/09/19**  
**Claimant: Appellant (1)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Federal Law PL 116-136 Sec. 2104 – Recovery of Overpayment of Federal Benefit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 21, 2020, reference 04, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 18, 2020. Claimant participated personally. Employer participated by Sandra Snyder and Candice Becker. Claimant and Employer waived time and notice for discussing the issues of overpayment of federal and state unemployment benefits.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether claimant has been overpaid state and / or federal unemployment benefits?

**FINDINGS OF FACT:**

The claimant currently works for Alaniz, his base period employer and has recently been placed on leave for a lack of work. Prior to claimant's being placed on leave, he decided that he no longer wished to come into work, for fear of contracting the Covid virus.

Claimant is a full time press operator for employer. On March 22, 2020 claimant emailed his supervisor stating, "With the way things are going, I don't think I'm going to make it in." Claimant went on to say, "If this is going to be the end of days, I'm going to spend it with my family."

Claimant remained away from work for the next month by his own choosing. Claimant has at no time stated to employer that he is able and available to return to work after absenting himself from work. On April 29, 2020, employer contacted claimant's supervisor to try and understand claimant's ongoing absences. Claimant's supervisor explained to the human resources officer that claimant had chosen to be absent from work for the last month while there was ongoing work available. Claimant did not present an ongoing medical concern that led to his absences. The supervisor explained that claimant would not be needed for work for the week beginning May 3, 2020. Claimant's layoff, which began that week, has continued on through today's date.

Claimant has received three weeks of unemployment benefits for the weeks ending on March 28, 2020 through April 11, 2020. The total amount of state benefits received by claimant since the recent job separation is \$1,401.00. Claimant has received no FPUC benefits in this matter.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant has not established that he is able and available for work, and is therefore disqualified from the receipt of state unemployment benefits and federal FPUC benefits. Days off from work occurred as a result of claimant not making himself able and available for work and are not compensable. As a result, claimant has been overpaid three weeks of unemployment benefits for the weeks ending on March 28, 2020 through April 11, 2020.

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".

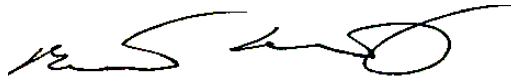
Claimant in this matter made the choice to absent himself from work without showing that there were reasons for his removing himself. Once claimant makes himself available to work, claimant would be eligible to be covered under employer's temporary shutdown. As things exist now, employer could decide at any time to resume operations in claimant's division and claimant could decide he was still not returning to work. Claimant must first establish that he is able and available to work before he can avail himself to benefits based on employer's temporarily halting operations in claimant's department. To date, claimant has not done so.

Claimant has been overpaid state benefits in this matter in the amount of \$1,401.00.

*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 due to disqualifying separations 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>. Please access this information to determine your eligibility.

**DECISION:**

The April 21, 2020, reference 04, decision is affirmed. The claimant is disqualified from the receipt of unemployment benefits until such time that claimant is able and available for work. Claimant has been overpaid state benefits in this matter in the amount of \$1,401.00.



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Blair A. Bennett  
Administrative Law Judge

May 20, 2020  
Decision Dated and Mailed

bab/scn