

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID T MCGILL
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL 21A-UI-01466-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On December 21, 2020, David McGill (claimant/appellant) filed an appeal from the December 11, 2020 (reference 01) unemployment insurance decision that denied benefits from July 12 through August 12, 2020 based on a finding that claimant was unable to work during that time due to illness.

A telephone hearing was held on December 18, 2021. The parties were properly notified of the hearing. The claimant participated personally. Heartland Express Inc of Iowa (employer/respondent) participated by HR Specialist Rebeckah Ackerman.

Claimant's Exhibits 1 and 2 were admitted. Employer's Exhibit A was admitted.

ISSUES:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time OTR truck driver. Claimant's first day of employment was May 14, 2003. The last day claimant worked on the job was June 23, 2020. Claimant's immediate supervisor was Driver Manager Mike Brown. Claimant formally resigned from employment on November 17, 2020.

Claimant requested and was granted FMLA leave from July 9 to September 29, 2020. Claimant was then granted further leave as a reasonable accommodation from September 30, 2020 until the date of separation. Claimant accepted and worked in another full-time driver position while on leave from employer. Claimant began this position on or about September 9, 2020. Claimant did not inform employer of this position until the date of resignation.

Claimant filed a claim for benefits each week from the benefit week ending July 18, 2020 and continuing through the benefit week ending September 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 11, 2020 (reference 01) unemployment insurance decision that denied benefits from July 12 through August 12, 2020 based on a finding that claimant was unable to work during that time due to illness is MODIFIED in favor of respondent. Claimant is unavailable for work and therefore ineligible for benefits effective with the benefit week ending July 18, 2020.

Iowa Code section 96.4(3) provides:

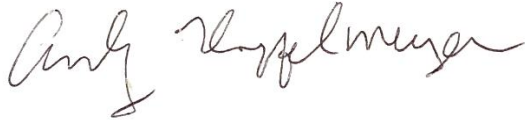
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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 requested and was granted FMLA leave from July 9 to September 29, 2020. During that leave he accepted another full-time position beginning September 9, 2020. Claimant is unavailable for work and therefore ineligible for benefits from the benefit week ending July 18, 2020. Claimant was initially unavailable for work because he requested and was granted a leave of absence. He was subsequently unavailable for work because he was employed full-time elsewhere. Benefits are therefore denied.

DECISION:

The December 11, 2020 (reference 01) unemployment insurance decision that denied benefits from July 12 through August 12, 2020 based on a finding that claimant was unable to work during that time due to illness is MODIFIED in favor of respondent. Claimant is unavailable for work and therefore ineligible for benefits effective with the benefit week ending July 18, 2020.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 1, 2021
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.