

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BLAKE A LOSSNER
Claimant

COMMUNICATION INNOVATORS INC
Employer

APPEAL 21A-UI-05650-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Respondent (2)**

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code §96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Communication Innovators Inc, the employer/appellant filed an appeal from the February 17, 2021, (reference 01) unemployment insurance decision that allowed benefits as of December 27, 2020. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2021. The employer participated through Jenny Gasper, human resources manager. Mr. Lossner participated and testified.

ISSUES:

Is Mr. Lossner totally, partially or temporarily unemployed?
Is Mr. Lossner able to and available for work?
Is Mr. Lossner still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Lossner began working for the employer on July 9, 2018. He worked as a full-time lead technician. Mr. Lossner is diagnosed with

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Mr. Lossner took intermittent Family Medical Leave Act (FMLA) leave beginning April 15, 2020 due to medical issues. In late December 2020, Mr. Lossner began experiencing COVID-19 symptoms. He tested positive for COVID-19 and, on advice of his doctor, he self-quarantined from December 28 through January 6. Mr. Lossner was scheduled to return to work on January 7. He did not return to work. Mr. Lossner told the employer that he was still sick with COVID-19 symptoms. The employer suggested that Mr. Lossner take a period of FMLA leave. Mr. Lossner did so. Mr. Lossner was on FMLA leave beginning January 7 and scheduled to return to work on February 23. On February 22, Mr. Lossner told the employer

that his doctor had advised him to self-quarantine again. Mr. Lossner's employment ended with the employer on February 23, 2021.

Iowa Workforce Development is investigating the issue of Mr. Lossner's separation from employment. This decision does not address that issue. This decision addresses the issues listed above from December 27, 2020 until Mr. Lossner's employment ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Lossner is not able to and available for work effective December 27, 2020.

Iowa Code § 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 Code § 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(1), (26, and (35) provide:

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.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In this case, Mr. Lossner was either under the care of his doctor who advised him to self-quarantine or ill from December 27, 2020 until he employment ended due to the medical issues he was facing. Since Mr. Lossner was not able to work, regular, state-funded unemployment insurance benefits are denied effective December 27, 2020.

Even though Mr. Lossner is not eligible for regular unemployment insurance benefits under state law, 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 during this time period. 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 up to 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.

DECISION:

The February 17, 2021, (reference 01) unemployment insurance decision is Reversed. Mr. Lossner was not able to and available for work effective December 27, 2020. Benefits are denied.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 30, 2021
Decision Dated and Mailed

dz/ol

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- To check on the status of a pending PUA application, please call 866-239-0843.