

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAYCE D CALVIN
Claimant

S & J TUBE INC
Employer

APPEAL 20A-UI-10027-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1/R)

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

STATEMENT OF THE CASE:

Jayce Calvin (claimant) appealed a representative's August 18, 2020, decision (reference 02) that denied benefits because he was unwilling to work for S & J Tube (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 6, 2020. The claimant participated personally. The employer participated by Brooke McCullough, Human Resources Manager, and Nicole Hoben, Office Support Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 2, 2019, as a full-time production laborer. The employer paid him \$11.80 per hour.

On April 14, 15, and 16, 2020, the claimant called in sick with Covid-19 related symptoms. After April 16, 2020, the claimant did not notify the employer of his absences and did not appear for work. His phone was not working correctly, he overslept, and he did not feel well.

For the week ending April 18, 2020, the employer paid the claimant \$135.00 in wages and vacation pay. For the week ending April 25, 2020, the employer paid the claimant \$31.00 in vacation pay. The employer sent him a termination letter for failure to report his absences for more than two weeks. On or about May 2, 2020, he felt better but did not contact the employer.

The week ending August 8, 2020, the claimant worked for a construction company for one week. On September 14, 2020, he got a full-time job working for Wineguard in Burlington, Iowa.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2020. His weekly benefit amount was determined to be \$339.00. The claimant received benefits from April 12, 2020, to the week ending August 1, 2020, for a total of \$5,075.00 in state

unemployment insurance benefits after April 12, 2020. He also received \$8,400.00 in Federal Pandemic Unemployment Compensation for the fourteen-week period ending July 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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 employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant was ill and considered to be unavailable for work as of April 12, 2020. He did not have a doctor's note releasing him to return to work. The claimant proved that he was able to work on August 2, 2020, when he started a new job.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant was working full-time for a different employer as of August 2, 2020. The claimant is disqualified from receiving unemployment insurance benefits for the week ending August 8, 2020, because the claimant was not available for other work. The claimant is disqualified from receiving unemployment insurance benefits from April 12, 2020, through August 8, 2020, because he was not able and available for work.

Even though the claimant 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. 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 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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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

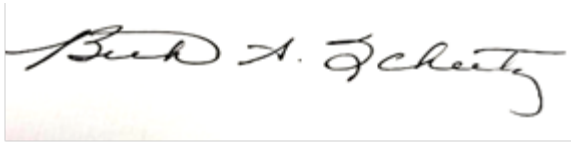
DECISION:

The August 18, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant is disqualified from receiving regular state unemployment insurance benefits from April 12, 2020, through August 8, 2020, because he was not able and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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
Unemployment Insurance Appeals Bureau
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October 8, 2020
Decision Dated and Mailed

bas/scn