

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON MCCANN

Claimant

APPEAL 21A-UI-01181-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITH SEWER SERVICE INC

Employer

OC: 09/15/19

Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

Jason McCann (Claimant) appealed a representative's September 11, 2020, decision (reference 07) that denied benefits based on his continued employment with Smith Sewer Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 17, 2021. Claimant participated personally. The employer participated by Donald Smith, President.

The administrative law judge took official notice of the administrative file. 20A-UI-01181-LJ, 20A-UI-01182-LJ, 20A-UI-01183-LJ, and 20A-UI-01184-LJ were heard at the same time.

ISSUES:

The issue whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

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 September 17 2019, as a full time service technician. Claimant last reported to work on March 11, 2020.

On March 11, 2020, Claimant came to Smith and told him that he needed to take several weeks off work to care for his children. This was at the beginning of the COVID-19 pandemic hitting Iowa, and schools were shutting down, so Claimant needed to stay with his three school-aged children during the day. Smith told him it would be fine if Claimant was gone from work for several weeks.

Claimant never returned to work after March 11. The employer texted him and called him several times in April to try and see if or when he would be returning, and he never answered or responded. On May 3, the employer texted Claimant and told him they were going to pick up

the work van from his house. Later that day, Smith and service manager Bill retrieved the van from Claimant's property.

Claimant testified that he became available to work again after he was "kicked off unemployment" in June, when everything opened back up. He had some job interviews in June and found a full-time job that he started on July 7, 2020. His children started going to daycare that same day.

The claimant filed for unemployment insurance benefits with an effective date of September 15, 2019. His weekly benefit amount was determined to be \$481.00. The claimant received benefits of \$481.00 per week for the week ending September 21, 2019, and from March 22, 2020, to the week ending June 13, 2020. This is a total of \$6,253.00 in state unemployment insurance benefits after the separation from employment. He also received \$6,600.00 in Federal Pandemic Unemployment Compensation for the eleven-week period ending June 13, 2020.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Claimant was able to and available for work effective March 15, 2020. The administrative law judge concludes that Claimant was not available for work from March 15, 2020, through July 4, 2020. Benefits are withheld for those weeks.

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 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.

Iowa Admin. Code r. 871-24.23(10) provides:

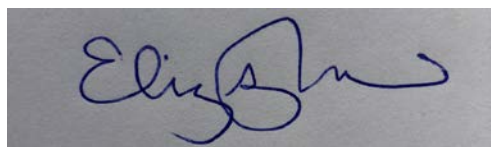
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

In this case, Claimant commenced a leave of absence on March 12, 2020, in order to care for and supervise the schooling of his three children. He testified that this leave of absence extended until at least mid-June, when he was disallowed unemployment insurance benefits. This administrative law judge finds that the leave of absence, combined with Claimant's lack of childcare, rendered him unavailable for work through the week ending July 4, 2020. Therefore, from March 15, 2020, through July 4, 2020, benefits are withheld.

DECISION:

The September 11, 2020, reference 07, decision is modified with no change in effect. Claimant was not available for work from March 15, 2020, through July 4, 2020. Benefits are withheld.



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

February 26, 2021
Decision Dated and Mailed

lj/scn

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, 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>.