

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT D DEARMORE
Claimant

WELLMAN PRODUCE CO
Employer

APPEAL NO. 20A-UI-03577-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/03/19
Claimant: Appellant (1R)**

Iowa Code § 96.5-5 – Worker’s Compensation
Federal Law PL 116-136 Sec. 2104 – Federal Unemployment Benefit Eligibility

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 13, 2020, reference 05, which held claimant eligible for unemployment benefits. After due notice, a telephone conference hearing was scheduled for and held on May 19, 2020. Claimant appeared and was represented by counsel Lori Bullock Employer participated by Julie Gordinier.

ISSUE:

The issue in this matter is whether claimant is disqualified for benefits due to the receipt of Worker’s Compensation benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant is currently receiving Worker’s Compensation benefits in this matter in the amount of \$508.15 / week based on an injury sustained at work. Claimant’s weekly benefit amount is \$156.00.

Claimant is set to end his receipt of Worker’s Compensation benefits on or around June 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

- (1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
- (2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
- (3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contributions to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Claimant has received Worker's Compensation benefits since filing for unemployment and has a temporary work restriction. As the weekly Worker's Compensation benefits received by claimant are in excess of the weekly benefit amount claimant is eligible to receive, claimant is not eligible for unemployment benefits at this time. As claimant is not eligible for Iowa unemployment benefits, claimant is not eligible at this time for FPUC benefits. The Iowa Code does not allow an administrative law judge to insert special circumstances such as that of the Covid to create a situation that the legislature had not contemplated and thus allow FPUC benefits.

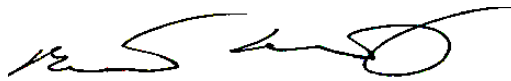
Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular 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>.

This matter is remanded to the fact finder for a determination as to whether claimant is eligible to receive benefits based on the separation between the parties.

DECISION:

The decision of the representative dated April 13, 2020, reference 05 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective February 18, 2020, until claimant meets all other eligibility requirements.

This matter is remanded to the fact finder for a determination of whether claimant is eligible for unemployment benefits based on claimant's separation from his employment.



Blair A. Bennett
Administrative Law Judge

May 20, 2020
Decision Dated and Mailed

bab/scn