

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VERSHUN D DILLON
Claimant

PARCO LTD
Employer

APPEAL NO. 20A-UI-07745-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Respondent (2/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) - Overpayment
Public Law 116-136 §2104(b) - Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 9, 2020, reference 02, decision that allowed benefits to the claimant beginning April 26, 2020, provided he was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on August 13, 2020. Claimant Vershun Dillon participated. Juliet Diaz, Human Resources Manager, represented the employer. Mr. Dillon waived any potential defects in notice. The administrative law judge took official notice of the following agency administrative records: KCCO, DBRO, KPYX, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the four-week period of April 26, 2020 through May 23, 2020.

Whether the claimant was totally, partially, or temporarily unemployed during the four-week period of April 26, 2020 through May 23, 2020.

Whether the claimant was overpaid regular benefits.

Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Vershun Dillon established an original claim for benefits that was effective April 26, 2020. Iowa Workforce Development set his weekly benefit amount at \$160.00. For the week that ended May 2, 2020, Mr. Dillon reported \$189.00 in wages and received no unemployment insurance benefits. For the weeks that ended May 9, May 16, and May 23, 2020, Mr. Dillon reported zero wages and received \$160.00 in regular benefits. The regular benefits totaled \$480.00. IWD also paid Mr. Dillon \$600.00 in Federal Pandemic Unemployment Compensation benefits for the weeks that ended May 9, May 16, and May 23, 2020. The FPUC benefits totaled \$1, 800.00.

Mr. Dillon was employed by Parco LTD, doing business as Wendy's, as a full-time crewmember, though the employer mischaracterized the employment as "part-time working full-time hours." Mr. Dillon began the employment in July 2019 and last performed work for the employer on May 3, 2020. Mr. Dillon's hourly wage was \$9.00. During the week that ended May 2, 2020, Mr. Dillon worked full-time hours for the employer. Though Mr. Dillon only reported \$189.00 in wages when he made his weekly claim for the week that ended May 2, 2020 his actual wages for the week were roughly double that amount.

The employer had full-time hours for Mr. Dillon during the three weeks between May 3 and May 23, but Mr. Dillon worked only one shift during that three-week period, a 7.5-hour shift scheduled for May 3, 2020. On May 3, 2020, Mr. Dillon told Tristan Daniel, General Manager, that he had been exposed to COVID-19 and needed to self-quarantine for two weeks. Mr. Dillon experienced no symptoms of COVID-19. Mr. Dillon asserts that his sister had tested positive for COVID-19. Mr. Dillon does not reside with his sister, but states that he accompanied his sister when she was tested for COVID-19. The employer approved Mr. Dillon's request for personal leave for the period beginning May 4, 2020, with the expectation that Mr. Dillon would return to work on May 18, 2020. On May 15, Mr. Daniel contacted Mr. Dillon to confirm that Mr. Dillon would be available for the week of May 18-24, 2020. The employer had scheduled full-time work hours for Mr. Dillon in anticipation of his return to work on May 18. On May 15, Mr. Dillon told Mr. Daniel that he was not ready to return to work. Mr. Dillon subsequently notified the employer that he would not be returning to the employment.

REASONING AND CONCLUSIONS OF LAW:

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(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 provides, in pertinent part, as follows:

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.

...

(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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available

(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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence in the record establishes that Mr. Dillon was not available for work within the meaning of the law during the four weeks between April 26, 2020 and May 23, 2020. At no point was Mr. Dillon laid off. Mr. Dillon is not a credible witness. He took an excessively casual approach to the hearing that projected a cavalier disingenuousness. He could not provide pertinent dates and otherwise appeared at a loss for details to support his theory of the case. There is no credible evidence to support Mr. Dillon's assertion that he was exposed to COVID-19 or that there was some other legitimate COVID-19 related basis for his decision to go off work. Mr. Dillon started by asserting that "a close family member" was positive for COVID-19, as if to suggest a member of his household had taken ill with COVID-19. Through additional questioning, it was revealed that Mr. Dillon does not reside with this family member. Mr. Dillon never experienced any symptoms of COVID-19, never felt the need to seek testing to determine whether he had contracted COVID-19, never felt the need to consult with a medical

provider. It is telling that Mr. Dillon established his claim for unemployment insurance benefits *the week before* he experienced the purported need to go off work due to COVID-19. Mr. Dillon misrepresented his wages when he made a weekly claim for that week. It is also telling that his conversation with the employer about his need to go off work due to purported COVID-19 exposure came *after* a 7.5 hour shift on May 3, 2020. Mr. Dillon perpetrated a casual, cavalier ruse to get paid time off from work. The employer eventually caught on. Mr. Dillon casually suggests that the administrative law judge should go along with the ruse under the theory that unemployment insurance benefits are intended for people who decide on their own to self-quarantine out of general concern for COVID-19 and who do so for an excessive period. Mr. Dillon was not unemployed and did not meet the availability requirement during the week that ended May 2, 2020, because he was working full-time. Mr. Dillon did not meet the availability requirement during the three weeks between May 3, 2020 and May 23, 2020 because he requested and was approved for a leave of absence, was voluntarily unemployed, and elected not to perform work for the employer beyond the May 3, 2020 shift. Benefits are denied for the period beginning April 26, 2020 and through May 23, 2020. The employer's account will not be charged for benefits for that period.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recovery the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits. The \$480.00 in regular benefits that Mr. Dillon received for the three weeks between May 3 2020 and May 23, 2020 is an overpayment of benefits that Mr. Dillon must repay.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because this decision disqualifies Mr. Dillon for regular unemployment insurance (UI) benefits, he is also disqualified for the \$1,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that he received for the three weeks between May 3, 2020 and May 23, 2020. Mr. Dillon must repay the overpaid FPUC benefits.

DECISION:

The July 9, 2020, reference 02, decision is reversed. The claimant was not available for work within the meaning of the law during the four weeks between April 26, 2020 and May 23, 2020 and is not eligible for benefits for that period. The employer's account shall not be charged for benefits for that period. The claimant is overpaid \$480.00 in regular benefits for three weeks between May 3, 2020 and May 23, 2020. The claimant is overpaid \$1,800.00 in FPUC benefits for three weeks between May 3, 2020 and May 23, 2020. The claimant must repay the overpaid regular and FPUC benefits.

This matter is remanded to the Benefits Bureau for adjudication of the issues related to the separation from the employment.

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. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* 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>.



James E. Timberland
Administrative Law Judge

August 20, 2020
Decision Dated and Mailed

jet/scn