

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BYRON D BUCKLIN
Claimant

MAINSTREAM LIVING INC
Employer

APPEAL 20A-UI-03062-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 8, 2020, (reference 01) that held claimant able to and available for work. After due notice, a hearing was scheduled for and held on May 7, 2020. Employer participated by Marcanne Lynch, Human Resources Director. The administrative law judge took official notice of the administrative record as it relates to benefits claimant has received to date.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant requested a leave of absence in March, 2020. Employer had work available to claimant during claimant's leave of absence.

Claimant began working for employer on March 12, 2014. On March 21, 2020 claimant requested a leave of absence because he had concerns about the Covid-19 pandemic. Employer granted claimant's request, and it kept his position open and available for him.

Claimant did not work beginning on March 21, 2020 through May 5, 2020. Claimant has now returned to work and is currently employed full-time by employer. Employer had full-time work available to claimant beginning on March 15, 2020 through the today's hearing date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective March 15, 2020.

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.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(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.

To be able to work, "[a]n 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." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Claimant has not established his ability to work. Benefits are denied.

As claimant has been receiving benefits, pending a determination on his appeals, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since this decision denies benefits the claimant was overpaid \$3,067.00 in unemployment insurance benefits.

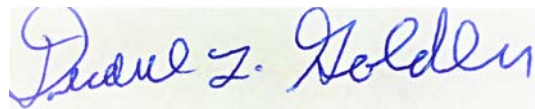
Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). The hearing notice did not include that issue so this matter must be remanded for further determination.

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 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>.

DECISION:

The decision of the representative dated April 8, 2020, (reference 01) is reversed. Claimant is not eligible to receive unemployment insurance benefits. The claimant was overpaid \$3,067.00 in unemployment insurance benefits, which must be repaid.

REMAND: The claimant has received benefits that he may not be entitled to receive. The overpayment issue for FPUC benefits is therefore remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and determination.



Duane L. Golden
Administrative Law Judge

May 12, 2020
Decision Dated and Mailed

dlg/scn