

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSSELL W BAUGH
Claimant

KARL CHEVROLET INC
Employer

APPEAL 21R-UI-11729-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (5R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence from Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 24, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective March 22, 2020 due to him being on a voluntary leave of absence from work. The parties were properly notified of the hearing. A telephone hearing was held on February 22, 2021. The claimant participated personally. The employer participated through witnesses Katie Kruger and Scott Sames. Exhibit D-1 was admitted. Administrative Law Judge (ALJ) Beth Scheetz issued a decision dated March 2, 2021 finding that the claimant's appeal was untimely in Appeal No. 21A-UI-01654-S1-T. Claimant filed an appeal to the Employment Appeal Board (EAB) and the EAB issued an order dated April 26, 2021 that reversed the March 2, 2021 ALJ decision and remanded the case to the Appeals Bureau for a new hearing and decision on the merits.

A new hearing date was scheduled for July 14, 2021 after due notice was issued to the parties. Claimant participated personally. The employer did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the previous hearing record made in Appeal No. 21A-UI-01654-S1-T and Exhibit D-1 therein. The hearing was consolidated with Appeal No. 21A-UI-10925-DB-T; 21A-UI-10926-DB-T; 21A-UI-10927-DB-T; and 21A-UI-10928-DB-T.

ISSUES:

Was the claimant able to and available for work?
Was the claimant on a voluntary leave of absence from work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a commercial sales person. He began his employment on April 23, 2018. On March 25, 2020, the claimant became ill with a cough. His supervisor, Scott Sams, sent the claimant home fearing that he may be infected with COVID-19 in an effort to limit the spread of the disease. Claimant was instructed that he could not return to work until he

received a negative COVID-19 test result. The claimant was not too ill to work when he was sent home on March 25, 2020 and would have remained at work but for his supervisor instructing him to leave.

Approximately three days later, on or about March 29, 2020, the claimant became ill with other symptoms and was physically unable to work due to the illness. Claimant was ill and unable to work due to his illness from March 29, 2020 through April 30, 2020. The employer received notes from the claimant's medical provider dated March 25, 2020; April 8, 2020; and April 13, 2020 stating that he should quarantine.

Claimant attempted to be tested for COVID-19; however, his medical provider did not have tests available and he was instructed that he possibly had COVID-19 based upon his symptoms. His medical provider instructed him to quarantine as a result. Claimant attempted to be tested in April of 2020 as well as May of 2020; however, the triage centers that the claimant visited were only testing healthcare workers at that time. The first time he was tested for COVID-19 on May 5, 2020, his test was lost and no result was given to him. Claimant was tested a second time for COVID-19 and his results on May 29, 2020 were negative.

By May 1 2020, the claimant was no longer having symptoms that were keeping him from working; however, his medical provider had advised him that he should refrain from working because of his underlying health condition that made him more susceptible to serious complications should he contract COVID-19. Claimant informed his employer that his medical provider was recommending that he not return to work due to his underlying medical condition and the COVID-19 pandemic. He was not able to telework.

Beginning May 1, 2020, claimant was on an informal leave of absence from work and then he completed paperwork for a formal medical leave at the beginning of May, 2020, which was approved by the employer. The claimant was on formal Family and Medical Leave Act (FMLA) leave for twelve weeks beginning June 1, 2020 and ending August 23, 2020.

Claimant returned to work after his FMLA leave was exhausted on August 24, 2020; however, his medical provider was recommending that he not work full-time. Claimant returned to work on a partial duty type status on an ad hoc basis. Claimant's medical provider instructed him that if his breathing was not right, then he would take extra breaks. He was also allowed to show up late or leave early in early to get extra rest. He was only working a fraction of his regular hours. The employer had full hours available to him but claimant limited his hours worked and possible exposure to the virus beginning August 24, 2020 based upon his medical provider's recommendations. Some days that he worked were two hour days, some were four hour days, some days were full days but he was not consistently working his regular full-time hours. He was not released by his medical provider for full-time work but did start working full-time on or about December 14, 2020 with a new employer.

Claimant filed his original claim for benefits effective March 22, 2020. His established weekly benefit amount was \$500.00. He reported wages and vacation pay when he filed his weekly-continued claims for benefits in the amount of \$809.00 in wages for the week-ending March 28, 2020.

Claimant earned but failed to report the \$563.00 in wages he earned for the week-ending August 29, 2020. Claimant earned but failed to report \$500.00 in wages earned for the week-ending September 5, 2020. Claimant earned and did report \$500.00 in wages for the week-ending September 12, 2020. Claimant earned and did report \$500.00 in wages for the week-ending September 19, 2020. Claimant earned and did report \$500.00 in wages for the week-

ending September 26, 2020. Claimant earned \$2,103.92 in wages and one day of paid time off for the week-ending October 3, 2020; however, he only reported earnings of \$500.00 in wages for the week-ending October 3, 2020. Claimant began full-time employment with Primus IT effective December 18, 2020.

Claimant reported \$8,021.00 in vacation pay for the week-ending October 10, 2020. Claimant reported \$100.00 in vacation pay for the week-ending October 17, 2020. No further earnings were reported after the week-ending October 17, 2020.

Claimant permanently separated from employment on or about October 1, 2020. The claimant's separation from employment has not yet been adjudicated by the Benefits Bureau and will be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-

employment, which is generally available in the labor market in which the individual resides.

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.

The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. 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. Employment Appeal Board*, 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

When the claimant was sent home on March 25, 2020, he was only suffering from a cough and was able to continue working; however, the employer determined that due to the COVID-19 pandemic and emergency circumstances, the claimant should not continue to work and he was sent home. No telework was available to him.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, **or emergency** from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

(emphasis added).

As such, for the week-ending March 28, 2020, the claimant did not voluntarily request a leave of absence from work but was temporarily unemployed due to emergency from his regular job with which he had worked full-time and would again work pursuant to Iowa Code § 96.19(38)c.

However, Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

Because the claimant earned wages in excess of his weekly-benefit amount, plus \$15.00 for the week of March 22, 2020 through March 28, 2020, even though he was temporarily laid off, benefits are denied based upon excessive earnings.

Beginning March 29, 2020 through April 30, 2020, the claimant was ill and unable to physically work due to his symptoms. His medical provider had instructed him to quarantine, even though he was not able to be tested for COVID-19. He had provided those doctor's notes to the employer informing him to quarantine on March 25, 2020, April 8, 2020, and April 13, 2020. At that time, the claimant had not yet requested a leave of absence from work.; however, the claimant was not physically able to work or available for work at his full-time employer. As such, benefits are denied from March 29, 2020 through April 30, 2020 due to the claimant not being able to work and available for work.

However, 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 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.

Iowa Admin. Code r. 871-24.23(41) provides:

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

(41) The claimant became temporarily unemployed, **but was not available for work with the employer that temporarily laid the claimant off**. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

(emphasis added).

As of May 1, 2020, the claimant was no longer suffering from COVID-19 like symptoms but his medical provider had instructed him to refrain from working because of his underlying medical conditions that made him more susceptible to serious complications should he contract COVID-19. Claimant informed the employer of his medical provider's recommendations and he was allowed to be off of work on an informal voluntary leave of absence. A formal FMLA leave was then approved for the claimant beginning June 1, 2020 through August 24, 2020 and he continued to be off of work.

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.

As such, from May 1, 2020 through August 24, 2020 the claimant was on an informal and then formal voluntary leave of absence from work and benefits are denied for that period due to the claimant's period of voluntary unemployment pursuant to Iowa Admin. Code r. 871-24.23(10).

As of August 24, 2020, the claimant returned to work but with his medical provider's restrictions to limit his work hours as he saw fit. Claimant did not work his regular full-time hours because of his medical provider's recommendations.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(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.

Further, claimant had excessive earnings above his weekly-benefit amount, plus \$15.00 for the week of August 23, 2020 through August 29, 2020 in the amount of \$563.00 and benefits are denied for that one-week period on that basis as well.

Claimant also had excessive earnings above his weekly-benefit amount, plus \$15.00 for the week-ending October 3, 2020 and October 10, 2020 (vacation pay) and benefits are denied for those two weeks on that basis as well.

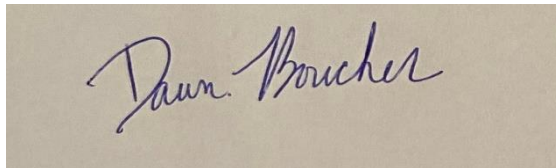
As such, effective August 24, 2020, the claimant was limiting his hours of availability due to his underlying medical condition and his attempt to limit his exposure to the COVID-19 virus. Benefits are denied effective August 24, 2020 and continuing pursuant to Iowa Admin. Code r. 871-24.23(16) as the claimant was not able to and available for full-time work.

DECISION:

The November 24, 2020 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant is not eligible for benefits for the week-ending March 28, 2020 due to excessive earnings. Claimant is not eligible for benefits effective March 29, 2020 and continuing as he was not able to and available for work.

REMAND:

The issue of whether the claimant's permanent separation from employment is disqualifying is remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

July 26, 2021
Decision Dated and Mailed

db/mh

Note to Claimant

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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 you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. PUA claims may be backdated prior to June 12, 2021 depending on eligibility requirements. Additional information can be found at:
<https://www.iowaworkforcedevelopment.gov/COVID-19>