

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DINI HABIB
Claimant

APPEAL 20A-UI-04167-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOWNE PARK LLC
Employer

OC: 03/22/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Federal Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Public Law 116-136, section 2104

STATEMENT OF THE CASE:

On May 18, 2020, Dini Habib, the claimant, filed an appeal from the May 15, 2020, (reference 01) unemployment insurance decision that denied benefits based on a finding that Habib was not able and available to work. The agency timely issued proper notice of the hearing to the parties. The undersigned presided over a telephone hearing on June 3, 2020. Habib participated personally. Towne Park, LLC, the employer, did not register for or participate in the hearing.

ISSUES:

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence?

Is the claimant eligible for federal pandemic unemployment compensation?

Was the claimant overpaid federal pandemic unemployment compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds the following facts.

Towne Park employed Habib as a full-time employee. Their employment relationship began 18 or 19 months prior to the date of hearing. Habib worked driving a shuttle and doing valley for Towne Park.

Habib drove a shuttle with airplane pilots as passengers. On or about March 17, 2020, Habib had one such pilot tell him that the pilot had tested positive for COVID-19. The pilot handed Habib a tip in cash after the ride ended.

Habib had two days off following the workday on which he drove the pilot who had tested positive for COVID-19. During his days off, he developed a fever. Habib called a doctor and described his symptoms. The doctor advised Habib to stay home from work because a fever is a symptom of COVID-19.

Habib called his boss. He told his boss about the pilot and his fever. Habib's boss agreed to let him take a leave of absence for his illness.

About two weeks later, Habib's boss called and asked if he wanted Towne Park to put Habib on a leave of absence or to lay him off. Habib asked to be placed on a leave of absence because he needed income, liked his job, and wanted to return to it when he was healthy again. It was Habib's understanding that Towne Park placed him on a leave of absence after the conversation he had with his boss.

About one week after Habib's conversation with his boss, his symptoms improved. With his wife's help, he attempted to log into the Towne Park website where he received his work assignments.

There was a message on the system stating Towne Park had discharged Habib. This was the first Habib had heard that Towne Park had discharged him. He does not know why Towne Park discharged him.

On or about May 28, 2020, Habib received an email survey from Towne Park asking if he wishes to return to work. With his wife's help, Habib completed the survey and submitted it to Towne Park shortly after receiving it. In Habib's response, he indicated he wants to return to work. During Habib's hearing testimony, he credibly testified that he liked working for Towne Park and wanted to go back to work there.

REASONING AND CONCLUSIONS OF LAW:

Is Habib eligible for regular unemployment insurance benefits under state law?

In order to receive regular unemployment insurance benefits under Iowa Code section 96.4(3), a totally unemployed claimant must establish he or she is able to and available for work. An employee who is on an approved leave of absence from work with the employer is not eligible for regular unemployment insurance benefits under state law.

Iowa Administrative Code rule 871-24.23(10) disqualifies a person from unemployment insurance benefits if the person requested a leave of absence. The rule deems missing work due to a requested leave of absence a period of voluntary unemployment. A person is ineligible for benefits during such a period of voluntary unemployment.

Here, the record establishes that Habib requested a leave of absence because he had come into direct contact with a pilot who had tested positive for COVID-19 and because Habib had a fever, a symptom of the virus. Towne Park approved the leave of absence beginning on or about March 20, 2020, until the apparent separation of employment between Habib and the employer. Therefore, under Iowa law, Habib is not eligible for unemployment insurance benefits

during the period of his approved leave of absence, which ended with the separation of employment between him and Towne Park.

This decision does not address whether Habib is eligible for unemployment insurance benefits due to his apparent separation from employment with Towne Park. The claim is remanded for a determination of whether Habib is eligible for unemployment insurance benefits under state law due to the nature of his apparent separation from employment with Towne Park.

Is Habib eligible for federal pandemic unemployment compensation (FPUC) under the CARES Act?

The federal CARES Act creates multiple types of assistance for persons impacted by COVID-19. One type of assistance is FPUC, an extra \$600 weekly benefit in addition to regular unemployment insurance benefits under state law. Under section 2104 of the CARES Act, a claimant must be eligible for regular unemployment insurance benefits under state law in order to qualify for FPUC.

In the current case, Habib is not eligible for FPUC during for the time in which he was not eligible for state benefits because he was on an approved leave of absence and not able and available to work. Habib's leave of absence began on or about March 20, 2020, and lasted a few weeks.

Was Habib overpaid FPUC?

Section 2104(f)(2) of the CARES Act requires a claimant to repay any FPUC they receive but to which they were not entitled under the law. Habib's first payment of FPUC is for the week of April 11, 2020. Because Habib's leave of absence began on or about March 20, 2020, and lasted a few weeks, it is possible that Habib did not receive any FPUC during the time period of his voluntary leave of absence. Put otherwise, it is possible that Habib has not been overpaid any FPUC.

The undersigned cannot determine whether Habib was overpaid any FPUC because:

- 1) The evidence does not establish the date when Habib became separated from employment with Towne Key; and
- 2) There has not been a determination on whether the nature of Habib's apparent separation from employment with Towne Key entitles him to regular state unemployment benefits.

The claim is therefore remanded for a determination on whether Habib received an overpayment of FPUC and, if he did, the amount of the FPUC overpayment, taking into account the date of any separation of employment between Habib and Towne Park and whether the nature of the separation means Habib is entitled to regular unemployment insurance benefits under state law.

Does this decision address whether Habib is eligible for federal pandemic unemployment assistance (PUA) under the CARES Act?

There is no indication in the record that Habib applied for PUA under the CARES Act. Habib's entitlement to PUA was not identified as an issue on the notice of appeal. This decision does not address whether Habib is entitled to PUA under the CARES Act.

DECISION:

The May 15, 2020, (reference 01) unemployment insurance decision is affirmed in part and remanded.

Habib was not able to work and available for work effective March 20, 2020, because he was on an employer-approved leave of absence due to illness. Regular unemployment insurance benefits funded by the state of Iowa are denied during the period of time for which he was on an approved leave of absence and was therefore not able and available to work.

Because the evidence presented at hearing establishes an apparent separation of employment, the claim is remanded for a determination of whether Towne Park discharged Habib for job-related misconduct, laid Habib off, or whether Habib quit with good cause attributable to Towne Park.

Because Habib is not eligible for regular unemployment insurance benefits under state law, he is also not eligible for federal pandemic unemployment compensation (FPUC) during the time period he was not able and available to work because he was on a leave of absence.

Because Habib's first received FPUC on April 11, 2020, it is possible that he has not been overpaid FPUC. The claim is remanded for a determination of whether Habib was overpaid FPUC given the time period of his leave of absence relative to the date of any separation of employment between Habib and Towne Park.

Even though Habib is not eligible for regular unemployment insurance benefits under state law and FPUC, as described above, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

Note to Claimant:

- This decision finds you are not eligible for regular unemployment insurance benefits under state law.
- 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.
- Even though you are not eligible for regular unemployment insurance benefits under state law, you may qualify for federal pandemic unemployment assistance (PUA) if you are unemployed for reasons related to COVID-19. **You must apply for PUA to determine if you are eligible for the program.** For more information about PUA, go to:

www.iowaworkforcedevelopment.gov/pua-information

A handwritten signature in black ink, appearing to read "Ben Humphrey", with a stylized flourish extending from the end.

Ben Humphrey
Administrative Law Judge

June 19, 2020
Decision Dated and Mailed

bh/scn