

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRAD S HOWE**  
Claimant

**EMCO ENTERPRISES LLC**  
Employer

**APPEAL 20A-UI-05728-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

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Iowa Code § 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence  
Iowa Code § 96.3-7 – Overpayment  
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Brad Howe (claimant) appealed a representative's May 29, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of March 22, 2020, because a leave of absence was granted by EMCO Enterprises (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 9, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant is available for work whether the claimant was overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from June 8, 2017, to February 2, 2020, as a full-time production line worker/forklift driver. On February 2, 2020, the claimant experienced pain in his shoulder and went to the doctor. His doctor restricted him from working. He has not been released to return to work. The claimant had trouble contacting the Veterans Administration Medical Facility during the pandemic because he believed the facility closed to appointments.

The claimant did not provide sufficient medical proof to the employer to support a short-term disability leave, long-term disability leave, or workers' compensation claim. On June 9, 2020, the employer asked the claimant to provide some documentation within fifteen days or return to work. The claimant did not contact the employer. He assumes he is unemployed.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. His weekly benefit amount was determined to be \$364.00. The claimant received benefits of \$364.00 per week from March 22, 2020, to the week ending May 23, 2020. This is a total of \$3,276.00 in state unemployment insurance benefits after the separation from employment. He also received \$4,800.00 in Federal Pandemic Unemployment Compensation for the eight-week period ending May 23, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant is unable to work because his doctor has restricted him. He is considered to be unavailable for work after March 22, 2020.

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.

When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The request may be from the worker or from a physician and delivered to the employer by the worker. In this case, the claimant had a doctor's note restricting him from working. That became a request for a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits from March 22, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, 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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

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.

The claimant received unemployment insurance benefits. This was during the period of time the claimant has been determined to be ineligible to receive benefits. This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation

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...

The claimant has been disqualified from receiving regular unemployment insurance benefits. The claimant has received Federal Pandemic Unemployment Compensation. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

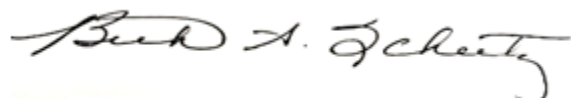
**DECISION:**

The representative's May 29, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from March 22, 2020.

The claimant has received unemployment insurance benefits and Federal Pandemic Unemployment Compensation. This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of 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, 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>.

Should circumstances change and the disqualification can be removed, notification should be made to the local workforce development center.



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Beth A. Scheetz  
Administrative Law Judge

July 21, 2020  
Decision Dated and Mailed

bas/mh