

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

STEVEN L HONAKER
Claimant

APPEAL NO: 20A-UI-04700-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DALL-HAUS INC
Employer

OC: 04/12/20
Claimant: Appellant (1)

871 IAC 24.23(10) – Leave of Absence
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 20, 2020, reference 01 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 15, 2020. The claimant participated in the hearing with his father/witness/representative Steven Honaker Senior. Austin Wyre, General Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work and whether he is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time team member for Dall-Haus (Culvers) February 1, 2016. When COVID 19 struck the state, he requested and was given a leave of absence beginning April 16, 2020, because his father suffers from three underlying medical conditions. The claimant was concerned he could be exposed at work and bring the virus home to his father. The claimant does not have anywhere else to live and does not have any siblings that could care for his father. The claimant explained the situation to the employer and the employer granted him a leave of absence April 16, 2020.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of the claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. The claimant was one of the individuals whose funds were released pending appeal. The administrative record shows the claimant filed for and received a total of \$900.00 in unemployment insurance benefits for the four weeks ending May 16, 2020. The claimant has also been paid \$2,400.00 in Federal Pandemic Unemployment Compensation for the four weeks ending May 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work and did take a leave of absence.

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. 871.24.23(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.

The claimant requested and was given a leave of absence because he was concerned about contracting the COVID 19 virus and passing it on to his father who has underlying medical conditions. While the claimant has good personal reasons for his leave of absence, his leave of absence is not attributable to the employer. Accordingly, benefits must be denied.

Because benefits are denied, the issues of overpayment of benefits and overpayment of Federal Pandemic Compensation benefits must be addressed.

Iowa Code section 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.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$900.00 for the four weeks ending May 16, 2020, pursuant to Iowa Code section 96.3(7) as the disqualification decision that created the overpayment decision has now been affirmed.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that he is overpaid those benefits.

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 \$600.00 (in this section referred to as "Federal Pandemic Unemployment Compensation").

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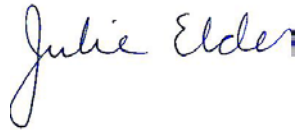
(f) Fraud and Overpayments

(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...

Here, the claimant is disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies him from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits the claimant received, he also received an additional \$2,400.00 in Federal Pandemic Unemployment Compensation benefits for the four weeks ending May 19, 2020. The claimant is required to repay those benefits as well.

DECISION:

The May 20, 2020, reference 01, decision is affirmed. The claimant is not able to work and available for work effective April 12, 2020. Benefits are withheld until such time as the claimant makes himself available for work to the extent he was available during the base period history.



Julie Elder
Administrative Law Judge

June 26, 2020
Decision Dated and Mailed

je/scn

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>.