

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEX M ENGEL
Claimant

APPEAL 20A-UI-14786-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRESBYTERIAN HOMES HOUSING
AND HUMAN RESOURCES**
Employer

**OC: 08/02/20
Claimant: Respondent (2)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the November 5, 2020, (reference 01) unemployment insurance decision that allowed benefits because the claimant's employment with the employer was in the same way as when he filed the claim. The parties were properly notified of the hearing. A telephone hearing was held on January 15, 2021. The claimant Alex M. Engel did not register for the hearing and did not participate. The employer participated through human resources manager Emily Liberty. The administrative law judge took official notice of the administrative file.

The administrative law judge mistakenly held the hearing one hour early; however, she monitored the C2T system used to call in for the hearing to see whether claimant registered for the hearing at the appropriate time, and continued to monitor the hearing for the time allotted for a default. Claimant did not register for the hearing.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work?
Has the claimant been overpaid benefits?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed full time as a resident assistant at Mill Pond since August 29, 2017.

On August 5, 2020, claimant tested positive for COVID-19. He was on an approved leave of absence between August 5 and August 14, 2020. Claimant returned to work on August 15,

2020, at the same hours and wages as prior to the leave of absence. Employer had work available for claimant during the time he was on his leave of absence.

The administrative record reflects that claimant has not received unemployment benefits since filing a claim with an effective date of August 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work. Benefits are denied.

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 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 Code § 96.19(38) provides:

"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.

Iowa Admin. Code r. 871-24.23 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.

Iowa Code section 96.7(2)a(2)(a) and (b) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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.


b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3). In this case, the claimant was totally unemployed. So the issue is whether claimant was able to and available for work. Claimant was not able to and available for work, as he was ill with COVID-19 and was on a leave of absence between August 5 and August 13, 2020. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits effective August 2, 2020.

Because claimant received no benefits for the period in question, the issues of overpayment and chargeability are moot.

DECISION:

The November 5, 2020, reference 01, unemployment insurance decision is reversed. The claimant was not able to and available for work and benefits are denied. The issues of overpayment and chargeability are moot.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 03, 2021
Decision Dated and Mailed

sa/ol

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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.