

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAMON WEGMULLER
Claimant

MOTION INDUSTRIES INC
Employer

APPEAL 20R-UI-05408-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Appellant (1R)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated April 13, 2020, (reference 01), that concluded the claimant/appellant was not eligible for unemployment insurance benefits after a separation from employment from the employer/respondent. This administrative law judge issued a decision on May 14, 2020, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on June 8, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2020. The claimant participated personally. The employer participated by Jessica Moon, Human Resources Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant performed services for the employer from August 20, 2018, through November 4, 2019, as a full-time fabricator. On November 4, 2019, the claimant requested short-term disability for medical issues. Based on his physician's documentation, his leave was not approved until November 26, 2019. The leave initially ended on December 31, 2019. It was later extended to February 14, 2020. During his leave, the claimant was receiving short-term disability payments.

On January 30, 2020, the employer received a text message from the claimant. He told the employer he would be out indefinitely. The employer asked the claimant if he was going to work with the leave team to transition to long-term disability or if he was resigning. The employer notified the claimant he was still approved for short-term disability through February 14, 2020. The claimant said he was resigning. The employer accepted the claimant's resignation effective

January 30, 2020. Continued work was available had the claimant not resigned. The employer sent the claimant a letter indicating his benefits were terminated.

The claimant remembers reaching out to his leave and local human resources teams after receiving the letter. The employer kept track of encounters with the claimant and the only communication with the claimant was on February 18, 2020, when the claimant requested long-term disability. At the appeal hearing, the claimant first asserted the resignation text was written by another person who had possession of his phone.

The employer never received a note from the claimant's doctor indicating he was released to return to work. The claimant believes his physician released him to return to work on an unknown date. He is not in possession of the release.

The claimant filed for unemployment insurance benefits with an effective date of March 8, 2020. His weekly benefit amount was determined to be \$342.00. The claimant has received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

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). The claimant filed for unemployment insurance benefits on March 8, 2020, and was totally unemployed as of that date. He was no longer performing any services or connected to the employer.

The next issue is whether the claimant was able and available for work as of March 8, 2020. 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 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. 871-24.22(1)a 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.

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 a claimant is unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant was under a doctor's care and cannot produce a release to return to work. On February 18, 2020, the claimant was requesting long-term disability. Without any other indication of ability to work from a doctor, he is considered to be unavailable for work after March 8, 2020. The claimant is disqualified from receiving unemployment insurance benefits beginning March 8, 2020.

The issue of the separation from work is remanded for determination.

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

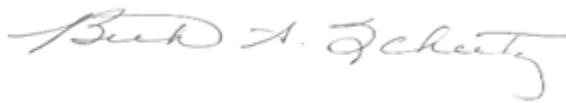
Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The representative's April 13, 2020 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits as of March 8, 2020, because of a medical inability to work.

The issue of the separation from work is remanded for determination.

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>.



Beth A. Scheetz
Administrative Law Judge

July 22, 2020
Decision Dated and Mailed

bas/mh