

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JANET G PACKARD**  
Claimant

**DUBUQUE COMMUNITY SCHOOL  
DISTRICT**  
Employer

**APPEAL 20A-UI-05915-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (2)**

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Employer filed an appeal from the June 4, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 14, 2020, at 11:00 a.m. Claimant participated. Employer participated through Mindy Klein, Payroll Specialist. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant was overpaid benefits.  
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed as a substitute teacher with Dubuque Community School District since March 25, 2015. Claimant filed an initial claim for benefits effective March 22, 2020 because schools closed due to Covid-19. Claimant did not perform work for employer after March 22, 2020. Claimant is on the substitute teachers list for the 2020/2021 school year. Claimant's base period includes wages that were not earned as an on-call employee; those wages are not sufficient to make claimant monetarily eligible for benefits.

The administrative record reflects that claimant filed for and has received regular unemployment insurance (UI) benefits in the gross amount of \$3,354.00 for the 13-week period between March 22, 2020 and June 20, 2020. In addition to regular unemployment insurance benefits, claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$7,200.00 for the 12-week period between March 29, 2020 and June 20, 2020.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not available for work since filing her claim effective March 22, 2020. Benefits are denied.

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.

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(2)i(1) and (3) provide:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Claimant did not work or earn wages after March 22, 2020. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, she is required to be able to and available for work. As an on-call worker, claimant is not considered to be available for work. When an individual is hired to work on-call, the implied agreement is that she will work when work is available and that work will not be regularly available. Thus, any diminution in hours when work is not available is directly related to the on-call nature of the employment, because no hours were guaranteed. Because claimant's base period wages are comprised of on-call employment and her other wages are not sufficient to make her monetarily eligible, benefits are denied.

The next issue to be determined is whether claimant has been overpaid benefits. For the reasons that follow, the administrative law judge concludes claimant was overpaid benefits, which must be repaid.

Iowa Code section 96.3.(7) states:

*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.

Benefits were paid to which claimant was not entitled. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$3,354.00 for the 13-week period between March 22, 2020 and June 20, 2020. Claimant is required to repay 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 (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...

Because claimant is disqualified from receiving UI, claimant is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$7,200.00 for the 12-week period between March 29, 2020 and June 20, 2020. Claimant is required to repay those 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 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

## DECISION:

The June 4, 2020 (reference 01) unemployment insurance decision is reversed. Claimant is totally unemployed and not available for work. Benefits are denied. Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$3,354.00 for the 13-week period between March 22, 2020 and June 20, 2020, which must be repaid. Claimant has been overpaid Federal Pandemic Unemployment Compensation in the gross amount of \$7,200.00 for the 12-week period between March 29, 2020 and June 20, 2020, which must be repaid.

A handwritten signature in cursive script, appearing to read "Adrienne C. Williamson".

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Adrienne C. Williamson  
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July 23, 2020  
Decision Dated and Mailed

acw/sam