

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISHNA KHADKA
Claimant

APPEAL 20A-UI-05640-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

**OC: 04/05/20
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Sec 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On June 9, 2020, the claimant filed an appeal from the June 8, 2020 (reference 01) unemployment insurance decision that denied benefits to the claimant based on her being unable to work. The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2020. Claimant participated personally. The employer, Marsden Bldg Maintenance LLC, did not participate. Sita Magar and Jit Kharka participated as witnesses for the claimant. CTS Lang Link provided Nepali language interpretation services to the claimant and witnesses. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on an approved leave of absence?
Is the claimant overpaid benefits?
Is the claimant 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 worked for employer since July 21, 2014. She works as a general cleaner. Her last day physically working on the job was April 3, 2020. She spoke to her supervisor about her concerns over being exposed to the Coronavirus during the COVID 19 pandemic. She requested leave from her supervisor and has been off of work since April 3, 2020. She remains as an employee with this employer, but is not working. Claimant also has an injury to her right leg which has kept her from working.

Claimant's administrative records establish that she has received regular State of Iowa unemployment insurance benefits of \$1,240.00 from April 5, 2020 through May 30, 2020.

Claimant has also received Federal Pandemic Unemployment Compensation of \$4,800.00 from April 5, 2020 through May 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

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", subparagraph (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.

In this case, the claimant notified her supervisor that she could not work during the COVID 19 pandemic and she was granted a leave of absence. As such, the period of time she is not working is deemed to be a period of voluntary unemployment. Claimant has not established that she is able to and available for work pursuant to Iowa Code § 96.4(3). Therefore, she is not eligible for regular, state-funded unemployment insurance benefits. Because benefits are denied, the issue of overpayment of regular State of Iowa unemployment insurance benefits and Federal Pandemic Unemployment Compensation must be addressed.

Iowa Code § 96.3(7)a-b 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 of \$1,240.00 for the weeks between April 5, 2020 and May 30, 2020 pursuant to Iowa Code § 96.3(7), as the disqualification decision that created the overpayment decision is affirmed. Those benefits must be repaid to the agency.

The next issue is whether the claimant has also been overpaid Federal Pandemic Unemployment Compensation (“FPUC”) 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...

Here, the claimant is disqualified from receiving regular State of Iowa unemployment insurance benefits. Accordingly, this also disqualifies her from receiving FPUC benefits. In addition to the regular benefits claimant received, she also received \$4,800.00 in FPUC benefits for the weeks between April 5, 2020 through May 30, 2020. Claimant is required to repay those benefits as well.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, she may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”). The Pandemic Unemployment Assistance (“PUA”) section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and 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

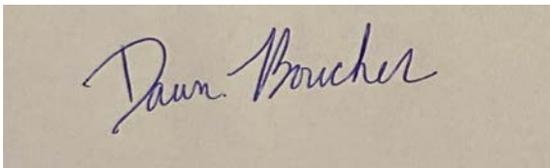
determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

If you are denied state benefits and wish to apply for PUA, please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back PUA benefits may automatically be used to repay any overpayment of state benefits.

DECISION:

The June 8, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective April 5, 2020. Unemployment insurance benefits funded by the State of Iowa are denied until such time as the claimant is able to and available for work.

The claimant is overpaid regular State of Iowa unemployment insurance benefits of \$1,240.00 for the weeks between April 5, 2020 and May 30, 2020 and she must repay the agency those benefits. The claimant is also overpaid \$4,800.00 in Federal Pandemic Unemployment Compensation benefits for the weeks between April 5, 2020 through May 30, 2020. Claimant is required to repay those benefits as well.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

July 13, 2020
Decision Dated and Mailed

db/scn