

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES M DE ANGELIS
Claimant

APPEAL NO. 20A-UI-04402-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND EMPLOYMENT SERVICES
LLC**
Employer

**OC: 03/22/20
Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

James De Angelis filed a timely appeal from the May 14, 2020, reference 01, decision that denied benefits effective March 11, 2020, based on the deputy's conclusion that Mr. De Angelis was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 9, 2020. Mr. De Angelis participated. Beverly Peterson, Director of Human Resources, represented the employer. Exhibit A, the appeal letter, and Exhibit 1, the employer statement of weekly hours and wages, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant has been able to work and available for work since March 22, 2020.
Whether the claimant has been partially unemployed since March 22, 2020.
Whether the claimant was overpaid regular benefits.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James De Angelis established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set Mr. De Angelis's weekly benefit amount at \$500.00. Mr. De Angelis's base period employers were SDH Education West, L.L.C. (Sedexo) and Heartland Employment Services, L.L.C. (HES). Mr. De Angelis worked full-time for both employer's throughout the base period. Mr. De Angelis established his claim for unemployment insurance benefits in connection with being temporarily laid off by Sedexo. The layoff was effective March 17, 2020. In the Sedexo employment, Mr. De Angelis worked as a cook at St. Ambrose University in Davenport and his full-time work hours were 5:00 a.m. to 1:30 p.m., five days per week, for a total of 38 to 39 hours per week. The layoff occurred in response to St. Ambrose University closing its campus for the remainder of the academic year to prevent community spread of the novel coronavirus.

In the HES employment, Mr. De Angelis works as a dietary cook/aide. Since May 22, 2019, the wage is the HES employment has been \$10.80 per hour. In the HES employment, Mr. De Angelis usually works a 3:30 p.m. or 4:00 p.m. to 8:00 p.m. shift during weeknights and 6:00 a.m. to 8:00 p.m. on the weekends for an average of 35 or more hours per week. With the exception of two weeks in April 2020, there has been no decrease in available work hours or pay at HES. Since Mr. De Angelis filed his claim for benefits, he has performed all the work that HES has for him.

By the time of the June 9, 2020 appeal hearing, Mr. De Angelis had made consecutive weekly claims for the 10 weeks between March 22, 2020 and May 30, 2020. For each claim week, Mr. De Angelis omitted wages earned from Heartland Employment Services, L.L.C. Mr. De Angelis reported his wages and received regular state benefits as follows:

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>Benefits Paid</u>
3/28/20	350.00 (Sedexo vacation)	150.00
4/4/20	0.00	500.00
4/11/20	0.00	500.00
4/18/20	0.00	500.00
4/25/20	0.00	500.00
5/2/20	0.00	500.00
5/9/20	0.00	500.00
5/16/20	0.00	
5/23/20	0.00	
5/30/20	0.00	

Mr. De Angelis also received \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for each of the six weeks between March 29, 2020 that May 9, 2020. The FPUC benefits totaled \$3,600.00.

Mr. De Angelis's actual hours worked and wages earned for the period between March 22, 2020 and June 6 2020 were as follows:

<u>Benefit Week End Date</u>	<u>Hours Worked</u>	<u>Actual Wages</u>
3/28/20	37.40	\$381.58 (plus \$350.00 vacation)
4/4/20	34.94	\$356.39
4/11/20	31.82	\$324.56
4/18/20	31.49	\$321.20
4/25/20	38.52	\$392.90
5/2/20	49.71	\$556.56
5/9/20	39.21	\$399.94
5/16/20	43.36	\$459.40
5/23/20	48.67	\$558.10
5/30/20	56.29	\$566.30 (plus \$95.69 holiday pay)
6/6/20	44.71	\$508.30

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", 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) 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.

(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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code Section 96.3(3) provides:

Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Mr. De Angelis's weekly benefit amount was set at \$500.00. The amount of weekly wages that exceeded one-fourth of that amount, \$125.00, during any week when Mr. De Angelis was partially unemployed would be deductible from Mr. De Angelis weekly unemployment insurance benefits.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

During the benefit week that ended March 28, 2020, Mr. De Angelis was working full-time or near full-time for HES and his wages from HES plus his vacation pay from Sedexo exceeded his weekly benefit amount by more than \$15.00. Mr. De Angelis cannot be deemed unemployed or partially unemployed during the week that ended March 28, 2020 and is not eligible for benefits for that week.

During the week that ended April 4, 2020, Mr. De Angelis was working nearly full-time, but less than his usual average number of hours for HES. Mr. De Angelis' wages for the week did not exceed his \$500.00 weekly benefit amount plus \$15.00. Accordingly, Mr. De Angelis was partially unemployed during the week that ended April 4, 2020. Because Mr. De Angelis's \$356.39 in weekly wages exceeded one-fourth of the weekly benefit amount, Mr. De Angelis is eligible for \$268.00 in reduced regular benefits for the week that ended April 4, 2020, provided he meets all other eligibility requirements.

During the benefit weeks that ended April 11, 2020 and April 18, 2020, Mr. De Angelis was able to work, available for work, and partially unemployed from the HES employment. During those two weeks, the employer provided fewer than the usual full-time work hours and Mr. De Angelis's weekly wages did not exceed his \$500.00 weekly benefit amount plus \$15.00. Mr. De Angelis is eligible for benefits for the weeks that ended April 11, 2020 and April 18, 2020, provided he meets all other eligibility requirements. Because Mr. De Angelis' \$324.56 in weekly wages exceeded one-fourth of his weekly benefit amount, Mr. De Angelis is eligible for \$300.00 in benefits for the week that ended April 11, 2020, provided he is otherwise eligible. Because Mr. De Angelis' \$321.20 in weekly wages exceeded one-fourth of his weekly benefit amount, Mr. De Angelis is eligible for \$303.00 in benefits for the week that ended April 18, 2020, provided he is otherwise eligible.

In response to the economic impact of the COVID-19 pandemic, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers. Based on this Agency pronouncement, the employer's account will not be charged for the partial regular benefits paid to the claimant for the weeks that ended April 4, 11 and 18, 2020.

During the benefit weeks between April 19, 2020 and June 6, 2020, Mr. De Angelis was working full-time hours, or greater than full-time hours. Mr. De Angelis cannot be deemed unemployed during those weeks and did not meet the unemployment insurance "availability" requirement for those weeks. Mr. De Angelis was not partially unemployed during those weeks. In addition, for the weeks that ended May 2, May 23, and May 30, 2020, Mr. De Angelis's wages exceeded his weekly benefit amount by more than \$15.00. Mr. De Angelis is not eligible for benefits for the seven weeks between April 19, 2020 and June 6, 2020.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recovery the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Based on the week-by-week eligibility determination, Mr. De Angelis is overpaid regular benefits as follows. Mr. De Angelis is overpaid \$150.00 for the week that ended March 28, 2020, \$232.00 for the week that ended April 4, 2020, \$200.00 for the week that ended April 11, 2020, \$197.00 for the week that ended April 18, 2020, \$500.00 for each of the three weeks between April 19, 2020 and May 9, 2020. The total overpayment of regular benefits for the seven weeks between March 22, 2020 and May 9, 2020 is \$2,279.00.

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 the claimant has been deemed eligible for regular benefits for the weeks that ended April 4, 11, and 18, 2020, provided he is otherwise eligible, he is also eligible for FPUC benefits for those same weeks, provided he is otherwise eligible. Because the claimant is disqualified for benefits for the week that ended March 28, 2020 and for the weeks between April 19, 2020 and June 6, 2020, the FPUC benefits that he received for the weeks that ended March 28, April 25, May 2, and May 9, 2020 are an overpayment of benefits that he must repay. The total FPUC overpayment is \$2,400.00. The claimant must repay the overpaid FPUC benefits.

DECISION:

The May 14, 2020, reference 01, decision is modified in favor of the claimant as follows. The claimant was not partially unemployed during the week that ended March 28, 2020 and is not eligible for benefits for that week. The claimant was partially unemployed during the weeks that ended April 4, 11 and 18, 2020 and is eligible for benefits for those weeks provided he meets all other eligibility requirements. The claimant is eligible for \$268.00 in regular benefits for the week that ended April 4, 2020, provided he is otherwise eligible. The claimant is eligible for \$300.00 in regular benefits for the week that ended April 11, 2020, provided he is otherwise eligible. The claimant is eligible for \$303.00 in regular benefits for the week that ended April 18, 2020, provided he is otherwise eligible. The employer's account shall not be charged for the benefits paid to the claimant for these three weeks. The claimant is also eligible for Federal Pandemic Unemployment Compensation for the weeks ending April 4, 11 and 18, provided he meets all other eligibility requirements. The claimant was not unemployed and not partially unemployed during the seven weeks between April 19, 2020 and June 6, 2020, and is not eligible for regular benefits or FPUC benefits for those seven weeks. The claimant is overpaid \$2,279.00 in regular benefits for seven weeks between March 22, 2020 and May 9, 2020. The claimant is overpaid \$2,400.00 in FPUC benefits for combined period of March 22-28 and April 19 through May 9, 2020. The claimant must repay the overpaid regular and FPUC benefits.



James E. Timberland
Administrative Law Judge

July 13, 2020
Decision Dated and Mailed

jet/scn