

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREW S CUBBAGE
Claimant

P J IOWA LC
Employer

APPEAL 20A-UI-04411-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

On May 20, 2020, Andrew Cubbage (claimant/appellant) filed an appeal from the May 13, 2020 (reference 01) unemployment insurance decision that denied benefits.

A telephone hearing was held on June 9, 2020. The parties were properly notified of the hearing. The claimant participated personally. Claimant's father, Charles Cubbage, participated as a witness for claimant. P J Iowa LC (employer/respondent) participated by Area Manager Nathan Cornelius.

Official notice was taken of the administrative record.

ISSUES:

- I. Is the claimant able to and available for work?
- II. Was the claimant overpaid benefits?
- III. 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 worked for employer as a part-time delivery driver. Claimant's first day of employment was May 13, 2019. The last day claimant worked on the job was March 29, 2020. Claimant's immediate supervisor was Cornelius.

Claimant notified Cornelius on March 29, 2020 that he was going to self-isolate and could not work further. Claimant was not experiencing any symptoms and a doctor had not recommended he self-isolate. However, claimant felt he should do so because both his daughter and his father

have weakened immune systems. Claimant was concerned he may contract COVID-19 at work and then spread the virus to his family. Claimant did not request protective equipment from employer prior to leaving. He wore a bandana over his face one day as a precaution but was told by another employee that he could not do so. He discontinued wearing the bandana at that time. Claimant does not recall who told him this or when.

Claimant contacted Cornelius on May 12 and 13, 2020 to attempt to return to work. He was no longer self-isolating at that time. Cornelius did not return his call or text message. Claimant began searching for other work at that time and subsequently took a position with another employer.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$142.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9, 2020. The total amount of benefits paid to date is \$852.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9. The total amount of FPUC benefits paid to date is \$3,600.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the May 13, 2020 (reference 01) unemployment insurance decision that denied benefits is AFFIRMED.

- I. Is the claimant able to and available for work?

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.

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.

Claimant removed himself from work without a medical directive beginning March 29, 2020 and continuing until May 12, 2020. This was essentially a leave of absence. He is not considered available for work during that time. As such, he is not eligible for benefits during that time.

II. Was the claimant overpaid benefits?

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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$142.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9, 2020. The total amount of benefits paid to date is \$852.00.

Because the administrative law judge affirms the decision finding claimant ineligible for benefits, the claimant has been overpaid benefits in the amount of \$852.00. Benefits shall be recovered. 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.

III. Is the claimant eligible for federal pandemic unemployment compensation?

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...

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9. The total amount of FPUC benefits paid to date is \$3,600.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$3,600.00. Claimant is required to repay those benefits.

DECISION:

The May 13, 2020 (reference 01) unemployment insurance decision that denied benefits is AFFIRMED. Claimant is ineligible for benefits from March 29, 2020 through April 9, 2020.

Claimant has been overpaid benefits in the amount of \$852.00. Benefits shall be recovered. 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.

Claimant has been overpaid FPUC benefits in the amount of \$3,600.00. Claimant is required to repay those benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Fax (515) 478-3528

June 24, 2020
Decision Dated and Mailed

abd/scn

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>.