

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELINE KOLLARS
Claimant

APPEAL 20A-UI-03296-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLUE STONE THERAPY INC
Employer

OC: 12/15/19
Claimant: Respondent (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Blue Stone Therapy Inc., filed an appeal from the April 15, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits effective March 1, 2020. The parties were properly notified about the hearing. A telephone hearing was held on May 12, 2020. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer, Blue Stone Therapy Inc., participated through Dawn Rodish, director of human resources. Sarah Truby attended as an observer only.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibit 1 was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Has the claimant been overpaid any unemployment insurance 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: The claimant began employment in 2019 as a part-time occupational therapist. She most recently worked on May 9, 2020 in that capacity. The claimant’s hours vary based upon the needs of the

employer. with no guarantee of hours or shifts each week. She agreed to these terms of employment at hire. The claimant for a period of time did work approximately thirty hours per week as another permanent employee was on a leave of absence. The claimant was aware the hours would be temporary and upon the return of the employee, her hours have been reduced. She works on average one day per week, approximately 5-8 hours per week since March 1, 2020. The employer was unaware of any other employment the claimant has at this time, and the claimant did not participate in the hearing.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$201.00, since March 1, 2020. The claimant has not received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed effective March 1, 2020.

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 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 Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Because claimant was hired to work only part-time hours and was not guaranteed full-time hours, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that full-time work will not be regularly available. Thus since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages as contemplated when she made at hire, she is not considered partially unemployed. Benefits are denied.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 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.

Since the claimant is ineligible for benefits, she was overpaid \$201.00 in unemployment insurance 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 ineligible from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). However, at this time, the claimant has not been paid FPUC, so there is no overpayment in federal 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, 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>.

DECISION:

The April 15, 2020 (reference 02) initial decision is reversed. The claimant is not partially unemployed and benefits are denied. If the circumstances change and claimant believes the disqualification can be removed, she should contact Iowa Workforce Development. The claimant is overpaid benefits in the amount of \$201.00 in regular benefits. These benefits must be repaid. The claimant is ineligible for FPUC at this time.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 14, 2020
Decision Dated and Mailed

jlb/scn