

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**HANNA T HOANG**  
Claimant

**SIoux CITY COMMUNITY SCHOOL DIST**  
Employer

**APPEAL NO. 20A-UI-04950-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (5)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Temporary & Partial Unemployment  
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:**

Hanna Hoang filed a timely appeal from the May 21, 2020, reference 02, decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that Ms. Hoang was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 25, 2020. Ms. Hoang participated. Stephanie Verros, Assistant Director of Human Resources, represented the employer. Exhibits 1 and A through D were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO and KPXX). The administrative law judge has taken official notice of the Governor's March 26, 2020 emergency proclamation that directed clothing stores to close.

**ISSUES:**

Whether the claimant has been able to work and available for work since she established the original claim for benefits that was effective March 22, 2020.  
Whether the claimant has been partially unemployed and/or temporarily unemployed since she established the original claim for benefits that was effective March 22, 2020.  
Whether the claimant has been overpaid regular unemployment insurance benefits.  
Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Hanna Hoang established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set her weekly benefit amount at \$186.00. Ms. Hoang made a weekly claim for the week that ended March 28, 2020 and for six weeks between April 5, 2020 and May 16, 2020. Ms. Hoang reported \$317.00 in vacation pay for the week that ended March 28, 2020. The amount Ms. Hoang reported for the week that ended March 28, 2020 was not actually vacation pay, but was instead Ms. Hoang's regular weekly wages from Sioux City Community School District. IWD did not pay benefits for the week that ended March 28, 2020.

Ms. Hoang reported zero wages for each of the six weeks between April 5, 2020 and May 16, 2020. IWD paid \$1,116.00 in regular benefits to Mr. Hoang for the six weeks between April 5, 2020 and May 16, 2020. IWD also paid \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) to Ms. Hoang for the six weeks between April 5, 2020 and May 16, 2020.

Ms. Hoang is employed by Sioux City Community School District as a part-time Instruction Assistant. Ms. Hoang usually performs her work duties at Liberty Elementary School. Principal Maria Ruelas is Ms. Hoang's supervisor. Ms. Hoang's usual work duties involve moving from classroom to classroom to assist with small group instruction as needed. Mr. Hoang's usual work hours are 9:00 a.m. to 2:00 p.m., Monday through Friday, 25 hours per week. Ms. Hoang's hourly wage is \$12.69. There has been no reduction in the hourly wage or in the weekly wages.

Ms. Hoang last performed her regular duties for the District on Friday, March 13, 2020. On Sunday, March 15, 2020, the District included Ms. Hoang in a "robo-call" in which the District Superintendent advised that the District's schools would be closed at least through April 14, 2020 in light of the COVID-19 pandemic. The District also included Ms. Hoang in a March 16, 2020 broadcast email that reiterated the cancellation of school and the District's plan to update staff.

On March 20, 2020, the District included Ms. Hoang in a broadcast email in which the District provided additional instruction to staff accordingly to their staffing group. The email directed "para-educators," including Ms. Hoang, to not report for work until directed, but to remain available for work as needed. The email directed Ms. Hoang to contact the school principal each Monday morning to learn what work the principal had for her that week. The District subsequently closed school for the remainder of the school year. The only work the employer assigned to Ms. Hoang was a brief training session that Ms. Hoang completed on April 26, 2020. However, the employer continued to pay Ms. Hoang \$317.25 in wages for 25 hours of work per week through the June 3, 2020 scheduled end of the school year. After the first week of her claim, Ms. Hoang omitted these weekly wages when she made her weekly claims.

Ms. Hoang is also employed by J.C. Penney as a part-time sales associate. Ms. Hoang last performed work for J.C. Penney on March 25, 2020. On March 26, 2020, Governor Kim Reynolds' March 26, 2020 issued an emergency proclamation that directed clothing stores to close.

#### **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".

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).

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 96.19(38)(c).

During the week that ended March 28 and during the six weeks between April 5, 2020 and May 16, 2020, Ms. Hoang remained able to work and available for work within the meaning of the law by remaining available to perform work the employer had for her. However, Ms. Hoang cannot be deemed temporarily unemployed or partially unemployed during the week that ended March 28, 2020 or during the six weeks between April 5, 2020 and May 16, 2020, because the employer continued to pay her regular weekly wages of \$317.25 and those wages exceeded her weekly benefit amount by more than \$15.00. Ms. Hoang was not eligible for benefits for the week that ended March 28, 2020 or for the six weeks between April 5, 2020 and May 16, 2020.

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.

Because this decision affirmed the denial of benefits set forth in the May 21, 2020, reference 02, decision, the \$1,116.00 in regular benefits that Ms. Hoang received for the six weeks between April 5, 2020 and May 16, 2020 is an overpayment of benefits that Ms. Hoang must repay.

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 Ms. Hoang is disqualified from receiving regular unemployment insurance (UI) benefits for the six weeks between April 5, 2020 and May 16, 2020, she is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC) for those weeks. The \$3,600.00 in FPUC benefits Ms. Hoang received for the six weeks between April 5, 2020 and May 16, 2020 is an overpayment of benefits that Ms. Hoang must repay.

**DECISION:**

The May 21, 2020, reference 02, decision is modified as follows. The claimant was able to work and available for work, but not temporarily unemployed or partially unemployed during the week that ended May 28, 2020 or during the six weeks between April 5, 2020 and May 16, 2020. The claimant is not eligible for benefits for the week that ended May 28, 2020 or during the six weeks between April 5, 2020 and May 16, 2020. The claimant is overpaid \$1,116.00 in regular benefits for the six weeks between April 5, 2020 and May 16, 2020. The claimant is overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the six weeks between April 5, 2020 and May 16, 2020. The claimant must repay the overpaid state and federal benefits.



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James E. Timberland  
Administrative Law Judge

July 8, 2020  
Decision Dated and Mailed

jet/scn