

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KANDUS J JELLISON
Claimant

APPEAL 20A-UI-07483-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESSIBLE MEDICAL STAFFING
Employer

OC: 04/19/20
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 Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated June 26, 2020 (reference 01) that determined the claimant was able and available for work. After due notice was issued, a hearing was held by telephone conference call on August 25, 2020. The claimant participated in the hearing. Mindy Butler, Administrator and Jeni Eich, Staffing Consultant, participated in the hearing on behalf of the employer.

ISSUES:

The issues are whether the claimant is eligible for total or partial unemployment benefits, whether the claimant still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge, whether the claimant is overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time CNA for Accessible Medical Staffing on July 9, 2018. Employees may work as much or as little as they choose. If an employee wants hours she needs to accept them right away because if she waits they will be picked up by another agency. On April 22, 2020, the claimant notified the employer she was going to take time off and file for unemployment due to COVID-19 because she did not have childcare.

On May 20, 2020, the employer called the claimant to ask if she was ready to return to work. The claimant stated she was ill and getting ready to move and did not have daycare. She said she would call when she was settled. On May 28, 2020, the employer left the claimant a voice mail saying she needed to start picking up shifts or the employer would have to report to Iowa

Workforce Development that she was declining work. On June 4, 2020, the claimant responded that she was not declining work but had an appointment with her cardiologist June 5, 2020, and when she returns to work she would only work at Davis County because Oakwood had a number of COVID-19 cases. She said she would ask her doctor if working was advisable and let the employer know. On June 10, 2020, the claimant agreed to work two shifts in Centerville but both shifts were cancelled by the client. On June 25, 2020, the employer texted the claimant four shifts and the claimant accepted one in Albia. On June 26, 2020, the employer emailed the claimant July hours in Centerville. On July 1, 2020, the claimant called and cancelled her July 5, 2020, shift because her grandmother fell and required care 24/7. The employer emailed the claimant to ask if it needed to pull her out of the rotation and place her on inactive status and the claimant did not respond. On July 6, 2020, the employer emailed the claimant hours at Oakwood for that week. On July 8, 2020, the employer texted the claimant more hours at Davis Center. On July 9, 2020, the employer texted the claimant with a shift for that evening. On July 13, 2020, the employer texted the claimant asking about her availability because it was the third week it had not heard from the claimant. The employer emailed the claimant her hours at Ridgewood in Ottumwa and sent her a text checking her availability. The claimant did not respond. On July 27, 2020, the employer emailed the claimant her hours at the Davis Center in Bloomfield and the claimant called and said she was still caring for her grandmother and could not work. She said her grandmother had a doctor's appointment August 5, 2020, and she would get back to the employer. On August 20, 2020, the employer texted the claimant asking about her grandmother's appointment and the claimant did not respond.

The claimant filed for unemployment insurance benefits with an effective date of April 19, 2020. Her weekly benefit amount was determined to be \$318.00. The claimant has received benefits in the amount of \$2,989.00 for the ten weeks ending June 27, 2020. She also received \$6,000.00 in Federal Pandemic Unemployment Compensation for the ten weeks ending June 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant was totally unemployed. So the issue is whether she is able to and available for 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.

The employer had work available for the claimant. However, the claimant informed the employer she was unable to work due to a lack of childcare and the need to provide 24/7 care for her grandmother after she fell. The claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20.

The claimant is considered to be on a leave of absence due to a lack of childcare and taking care of her grandmother and is not available for work. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant does not have to be able and available for work to be eligible for the federal unemployment programs. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

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

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

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 claimant received unemployment insurance benefits. This was during the period of time the claimant has been determined to be ineligible to receive benefits. This decision denies benefits. If this decision becomes final or if the claimant is not eligible for PUA, she may have an overpayment of benefits.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she may be overpaid those 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...

The claimant has been disqualified from receiving regular unemployment insurance benefits. She has also received Federal Pandemic Unemployment Compensation. If this decision becomes final or if she is not eligible for PUA, she may have an overpayment of benefits.

DECISION:

The June 26, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective April 19, 2020. Regular 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 has received unemployment insurance benefits and Federal Pandemic Unemployment Compensation. This decision denies benefits. If this decision becomes final or if the claimant is not eligible for PUA, she may have an overpayment of benefits.



Julie Elder
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Fax (515)478-3528

August 31, 2020
Decision Dated and Mailed

je/mh

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>.