

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KELLY P CONROY**  
Claimant

**APPEAL 20A-UI-07809-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BETTY HILL DANCE STUDIOS INC**  
Employer

**OC: 03/22/20**  
**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
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

**STATEMENT OF THE CASE:**

On July 17, 2020, the employer filed an appeal from the July 8, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 17, 2020. Claimant participated and testified. Employer participated through owner Debbie Westphal Swander. Employer's Exhibits 1 through 3 and claimant's Exhibits A through C were received into evidence.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.  
Whether claimant was overpaid benefits.  
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time dance teacher with the employer. Claimant last worked for the employer in March 2020, teaching on Wednesday nights for 1.75 hours. Claimant was off work the week of March 17, 2020, as the studio was closed for spring break. Claimant was supposed to return to work on March 25, 2020. However, prior to this, the dance studio was shut down per an executive order by Iowa Governor Kim Reynolds, made in response to the COVID 19 pandemic. While the dance studio was closed, teachers were expected to create instructional videos equaling their normal teaching time each week until in-person classes resumed. During this time, claimant created one video related to recital hair and make-up. The employer did not post this video, as it was not instructional to dance itself. Examples were given of appropriate instructional videos. Claimant made no other attempt to post any videos.

On June 14, 2020, claimant learned that in-person classes were to resume the week of June 15, 2020. Claimant sent a message to the employer stating she was sorry, but she would be unable to return to work, as she was out of state and not planning to return until the end of June. Claimant traveled out of state from June 10 through June 28, 2020 to assist her sister, with her minor child. Upon returning to Iowa, claimant asked the employer if she should return to work to help prepare for the July 7 recital, since she had traveled out of state. The employer presumed claimant had quit, since she did not return to teach the week of June 15.

Claimant filed an initial claim for unemployment insurance benefits effective March 29, 2020. Claimant's weekly benefit amount is \$291.00. The administrative record reflects that claimant filed weekly claims for the weeks ending March 28, 2020 through August 15, 2020. Claimant has other part-time employment as well. Claimant reported wages from this other employment for the weeks ending May 9, 2020 and July 4, 2020. Claimant received partial benefits in the amounts of \$198.00 and \$183.00 for these weeks. Claimant did not earn any other wages from March 22 to present. Claimant received regular unemployment insurance (UI) benefits in the gross amount of \$5,899.69 from March 22, 2020 to August 15, 2020. In addition to regular unemployment insurance benefits, claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$10,200.00 between March 22, 2020 and August 15, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work, effective March 22, 2020.

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 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 96.1A, subsection 38, paragraph "b", subparagraph (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.

Iowa Admin. Code r. 871-24.23 provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Here, claimant was not working for and did not received wages from this employer at all beginning the week of March 22, 2020. Claimant did work and report wages from her other part-time employer for the weeks ending May 9, 2020 and July 4, 2020 and thus was partially unemployed those weeks. Claimant was totally unemployed the remainder of the weeks claimed between March 22 and August 15, 2020.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Here, remote work, with hours equivalent to claimant's regular in-person hours, was available to claimant from this employer for the weeks beginning March 22, 2020 and ending June 13, 2020. Claimant opted not to make herself available for this work. Regular in-person hours were available to claimant beginning June 14, 2020, however, claimant was not available to work these hours, as she was traveling out of state. Claimant did not return until June 28, 2020, at which point she notified the employer she could return to assist with the dance recital. However, the employer believed her to have resigned employment by this time, as traveling out of state would require her to quarantine past the July 7 recital date. As claimant failed to make herself available for work, she is not eligible for unemployment insurance benefits for benefits from March 22, 2020 through June 27, 2020.

The issue of whether claimant was separated from employment effective June 28, 2020 and whether that separation was disqualified must be remanded to the Benefits Bureau of Iowa Workforce Development for an initial determination.

The next issue to be determined is whether claimant has been overpaid benefits. For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.3.(7) states:

*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.

For the period when claimant was not unemployed, claimant was paid benefits to which she was not entitled. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$3,981.00 for the period between March 22, 2020 and June 27, 2020. Claimant is required to repay those benefits.

The next issues to be determined are whether claimant is eligible for FPUC and whether claimant has been overpaid FPUC. For the reasons that follow, the administrative law judge concludes:

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...

For the period when claimant is disqualified from receiving UI, claimant is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$7,800.00 for the period between March 22, 2020 and June 27, 2020. Claimant is required to repay those benefits.

**DECISION:**

The July 8, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was not available for work from March 22, 2020 through June 27, 2020, though work was available to her from the employer. Benefits are denied for this time period. Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$3,981.00 for the period between March 22, 2020 and June 27, 2020, which must be repaid. Claimant has been overpaid Federal Pandemic Unemployment Compensation in the gross amount of \$7,800.00 for the period between March 22, 2020 and June 27, 2020, which must be repaid. The issue of whether claimant was overpaid either regular unemployment insurance benefits or Federal Pandemic Unemployment Compensation for the weeks between June 28 and August 15, 2020 is reversed pending a determination on her separation from employment.

**REMAND:**

The issues of claimant's separation from this employer, and possible corresponding overpayments for weeks beginning June 28, 2020 and ending August 15, 2020, as delineated above, are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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August 25, 2020  
Decision Dated and Mailed

nm/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 due to disqualifying separations, 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>.