

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABBIE KOCH
Claimant

APPEAL 20A-UI-08452-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRUNDY COUNTY HERITAGE CENTER
Employer

OC: 04/05/20
Claimant: Appellant (4/R)

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) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Abbie Koch (claimant) appealed a representative's July 10, 2020, decision (reference 01) that denied benefits based on her employment with Grundy County Heritage Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 28, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibits A, B, and C were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, 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.

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 on July 31, 2013. She worked as a full-time manager at an Arby's in a truck stop for the employer. She earned \$16.00 per hour and worked forty hours per week.

On March 23, 2020, the employer reduced the claimant's hours to thirty hours per week due to the Covid-19 pandemic. In April 2020, the claimant was working approximately twenty hours per week due to the Covid-19 pandemic. On or about April 22, 2020, the employer had a meeting and told employees the business would open again on May 4, 2020. For each of the three weeks ending April 25, 2020, the claimant earned \$160.00, gross, in wages. For the week ending May 2, 2020, the claimant earned \$208.00, gross, in wages. The claimant began working full-time hours on May 4, 2020.

On May 14, 2020, the Department sent the claimant and others a letter indicating eligibility for Federal Cares Act benefits. The claimant thought she was eligible for state unemployment insurance benefits. She continued to file her weekly claim for state unemployment insurance benefits after she returned to full-time work.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount (WBA) was determined to be \$452.00. Her WBA plus \$15.00 was \$467.00. The claimant received partial benefits from April 5, 2020, to the week ending July 4, 2020, for a total of \$2,517.00 in state unemployment insurance benefits after the separation from employment. She also received \$5,400.00 in Federal Pandemic Unemployment Compensation for the nine-week period ending July 4, 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.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant was at all times working for the employer. She cannot be considered totally or temporarily unemployed. The issue is whether she was partially unemployed.

The employer reduced the claimant's hours from March 22, 2020, through May 2, 2020. During that period, she filed for unemployment insurance benefits for the weeks between April 5, 2020,

and May 2, 2020, four weeks. The claimant reported her wages each week when she filed her weekly claim. Her wages each week were less than her WBA plus \$15.00. The claimant was eligible to receive partial unemployment insurance benefits for the four-week period ending May 2, 2020.

From May 3, 2020, through July 4, 2020, the claimant was working full-time at the same hours and wages as she agreed to work when she was hired. The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant is disqualified from receiving unemployment insurance benefits because the claimant was not available for other work as of May 3, 2020. She was fully employed. Benefits are denied as of May 3, 2020.

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 must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

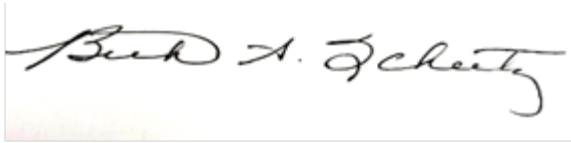
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The July 10, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is eligible for partial unemployment insurance benefits from April 5, 2020, through May 2, 2020. The claimant is not able to work and available for work effective May 3, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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>.



Beth A. Scheetz
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August 31, 2020
Decision Dated and Mailed

bas/scn