

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YIN HTWAY
Claimant

FAREWAY STORES INC
Employer

APPEAL 20A-UI-07007-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
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) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Fareway Stores (employer) appealed a representative's June 23 2020, decision (reference 01) that concluded Yin Htway (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Theresa McLaughlin, Vice President of Human Resources. 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.

The issue is also whether the claimant was 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 on July 30, 2019, as a part-time grocery clerk. The employer told her she would work five to twenty-eight hours per week and be paid \$11.00 per hour.

The claimant requested a leave of absence to self-isolate from May 2, 2020, to May 17, 2020. The claimant did not tell the employer the reason for the self-isolation. The employer granted

her request. The employer paid the claimant twenty-eight hours of vacation pay for the week ending May 2, 2020.

The claimant filed for unemployment insurance benefits with an effective date of May 3, 2020. Her weekly benefit amount was determined to be \$173.00. The employer did not pay the claimant any wages for the two-week period ending May 16, 2020. The claimant reported vacation pay of \$333.00 for the week ending May 9, 2020. \$173.00 in benefits was paid to the claimant for the week ending May 16, 2020. She returned to work after May 17, 2020.

For the week ending May 23, 2020, the employer paid the claimant wages of \$256.00. The claimant reported wages of \$204.00 to the department. No benefits were paid to the claimant. For the week ending May 30, 2020, the employer paid the claimant wages of \$253.00. The claimant reported wages of \$201.00 to the department. No benefits were paid to the claimant.

For the week ending June 6, 2020, the employer paid the claimant wages of \$220.00. The claimant reported wages of \$177.00 to the department. \$39.00 in benefits were paid to the claimant. For the week ending June 13, 2020, the employer paid the claimant wages of \$265.00. The claimant reported wages of \$177.00 to the department. \$39.00 in benefits were paid to the claimant.

For the week ending June 20, 2020, the employer paid the claimant wages of \$278.00. The claimant reported wages of \$210.00 to the department. No benefits were paid to the claimant. For the week ending June 27, 2020, the employer paid the claimant wages of \$212.00. The claimant reported wages of \$230.00 to the department. No benefits were paid to the claimant. For the week ending July 4, 2020, the employer paid the claimant wages of \$155.00. The claimant reported wages of \$178.00 to the department. \$38.00 in benefits were paid to the claimant.

The claimant received a total of \$289.00 in state unemployment insurance benefits and \$1,800.00 in Federal Pandemic Unemployment Compensation.

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(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 claimant. However, the claimant informed the employer she wanted to self-isolate. The employer agreed to allow the claimant time off for that reason. The claimant is considered to have been on a leave of absence for the two-week period ending May 16, 2020, and is not available for work. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits. After May 16, 2020, the claimant worked her regular hours and wages and cannot be considered unemployed.

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 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 \$289.00 in state 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, the claimant will have an overpayment of benefits.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation.

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. The claimant has received \$1,800.00 in Federal Pandemic Unemployment Compensation. If this decision becomes final or if the claimant is not eligible for PUA, the claimant will have an overpayment of benefits.

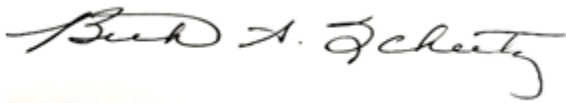
DECISION:

The June 23, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective May 3, 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 \$289.00 in state unemployment insurance benefits and \$1,800.00 in Federal Pandemic Unemployment Compensation. This decision denies benefits. If this decision becomes final or if the claimant is not eligible for PUA, the claimant will have an overpayment of 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>.



Beth A. Scheetz
Administrative Law Judge
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August 10, 2020
Decision Dated and Mailed

bas/sam