

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMBRA HOYT
Claimant

APPEAL NO. 20A-UI-04828-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TACO JOHNS OF IOWA INC
Employer

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
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:

Ambra Hoyt filed a timely appeal from the May 22, 2020, reference 02, decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that Ms. Hoyt was unable to work according to her physician. After due notice was issued, a hearing was held on June 22, 2020. Ms. Hoyt participated. Terra McPheter represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant was overpaid regular unemployment insurance benefits.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ambra Hoyt established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set Ms. Hoyt's weekly benefit amount at \$175.00. Taco Johns of Iowa, Inc. is the primary base period employer and Ms. Hoyt's most recent employer. Ms. Hoyt made weekly claims for 12 consecutive weeks between March 22 2020 and June 13, 2020. For each week, Ms. Hoyt reported that she is not working, that she is able to work and available for work, that she has not refused any work, and that she had zero wages, vacation pay and holiday pay. Iowa Workforce Development paid \$175.00 in regular benefits to Ms. Hoyt for each of the eight weeks between March 22, 2020 and May 16, 2020. The regular weekly benefits totaled \$1,400.00. Iowa Workforce Development paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) to Ms. Hoyt for each of seven weeks between March 29, 2020 and May 16, 2020. The FPUC benefits totaled \$4,200.00.

The employer and Ms. Hoyt each consider Ms. Hoyt a current employee of Taco Johns. However, Ms. Hoyt has not performed any work for Taco John's since March 16, 2020. Up to that point, Ms. Hoyt worked for Taco John's as a full-time shift leader. In November 2019, the employer increased Ms. Hoyt's hourly wage to \$11.00. When Ms. Hoyt was performing work for the employer, she usually worked 35 to 45 hours per week. Terra McPheter is General Manager at the employer's Oskaloosa restaurant and has at all relevant times been Ms. Hoyt's supervisor. Ms. Hoyt's daughter also worked at the Oskaloosa Taco John's until March 2020. Ms. Hoyt's daughter was two to three months pregnant at that time. Ms. Hoyt and her daughter share a residence.

On March 17, 2020, the employer's head of operations and corporate human resources representative laid off Ms. Hoyt and her daughter out of an abundance of caution in response to the COVID-19 pandemic. Neither Ms. Hoyt nor her daughter had contracted COVID-19. Nor had any other staff at the Oskaloosa Taco John's contracted COVID-19. Ms. McPheter had a sore throat, but there is no indication this was related to COVID-19. There was no indication that anyone in the workplace had been exposed to COVID-19. However, at that time there were two confirmed COVID-19 cases in Mahaska County. The employer's decision to layoff Ms. Hoyt, Ms. Hoyt's daughter and some other staff was in response to some employees being frightened to report to work.

By April 17, 2020, the employer's level of business at the Oskaloosa restaurant had rebounded and the employer recalled Ms. Hoyt to her full-time employment. The employer initially sent a text message. On April 23, 2020, Ms. McPheter spoke with Ms. Hoyt. At that time, Ms. Hoyt told Ms. Pheter that she and her daughter would not be returning to the employment until after Ms. Hoyt's daughter saw her doctor on May 14, 2020. Ms. Hoyt did not return to the employment following the May 14, 2020 medical appointment and has continued off work to the present. The employer elected to authorize Ms. Hoyt's daughter's continued absence from the employment in light of her pregnancy and did so effective May 19, 2020. The employer did not authorize Ms. Hoyt to be off work beyond the April 17, 2020 recall date and has continued to have full-time work for Ms. Hoyt since April 17, 2020. A doctor did advise Ms. Hoyt to go off work or to remain off work due to COVID-19 or any other reason.

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".

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(10), (16) and (41) provide as follows:

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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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.

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).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The evidence in the record establishes that Ms. Hoyt was temporarily laid off effective March 17, 2020 and continued to be on temporary layoff through Thursday, April 16, 2020. The temporary layoff was the employer's initial reaction to economic and public safety uncertainties when the COVID-19 pandemic first began to impact Iowa. The temporary layoff did not disqualify Ms. Hoyt for unemployment insurance benefits. Ms. Hoyt was eligible for benefits for the four benefit weeks between March 29, 2020 and April 18, 2020, provided she meets all other eligibility requirements.

In response to the economic impact of the COVID-19 pandemic on Iowa commerce, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers. Based on this Agency pronouncement, the employer's account will not be charged for any benefits paid to Ms. Head for the period of March 22, 2020 through May 9, 2020. Because the temporary layoff was response to the COVID-19 pandemic, the employer's account will not be charged for benefits paid to Ms. Hoyt for the period of the claim during which Ms. Hoyt was temporarily laid off, March 22, 2020 through April 18, 2020.

Effective the benefit week that began April 19, 2020, Ms. Hoyt was able to work, but not been available for work within the meaning of the law. Since that time, Ms. Hoyt has elected not to make herself available for any work with the employer, though the employer has had ongoing full-time employment available for Ms. Hoyt. Since the week that began April 19, 2020, Ms. Hoyt has been on an unauthorized leave from the employment. There has been no bona fide COVID-19 related basis for Ms. Hoyt's continued absence from the employment since the April 17, 2020 recall date. Ms. Hoyt is disqualified for benefits effective April 19, 2020. The availability disqualification continued at the time of the June 22, 2020 appeal hearing.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recovery the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because Ms. Hoyt received regular benefits for the period that included April 19, 2020 through May 16, 2020, and because decision affirms the disqualification for the period beginning April 19, 2020, the \$700.00 in regular benefits that Ms. Hoyt received for four weeks between April 19, 2020 and May 16, 2020 is an overpayment of benefits. Ms. Hoyt must repay 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...

Because Ms. Hoyt is disqualified from receiving regular unemployment insurance (UI) benefits for the period beginning April 19, 2020, she is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC) for the period beginning April 19, 2020. The \$2,400.00 in FPUC benefits Ms. Hoyt received for four weeks between April 19, 2020 and May 16, 2020 is an overpayment of benefits. Ms. Hoyt must repay the overpaid benefits.

DECISION:

The May 22, 2020, reference 02, decision is modified in favor of the claimant as follows. The claimant was temporarily laid off during the period of March 22, 2020 through the benefits week that ended April 18, 2020 and is eligible for benefits for those four weeks, provided she meets all other eligibility requirements. The employer's account shall not be charged for the benefits paid for those four weeks. Effective April 19, 2020, Ms. Hoyt was able to work, but not available for work within the meaning of the law. Benefits are denied effective April 19, 2020. The availability disqualification continued as of the June 22, 2020 appeal hearing. The claimant is overpaid \$700.00 in regular benefits for the four weeks between April 19, 2020 and May 16, 2020. The claimant is overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation for four weeks between April 19, 2020 and May 16, 2020. The claimant must repay the overpaid regular and FPUC benefits.



James E. Timberland
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

jet/scn