

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TRACIA K ANDERSEN**  
Claimant

**APPEAL 20A-UI-07910-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEDONA STAFFING INC**  
Employer

**OC: 03/29/20**  
**Claimant: Respondent (2)**

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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:**

Sedona Staffing (employer) appealed a representative's July 14, 2020, decision (reference 01) that concluded Tracia Andersen (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 18, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Colleen McGuinty, Unemployment Insurance Administrator.

The employer offered and Exhibit One was 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.

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 employer is a temporary employment service. The claimant performed services off and on from 2019 through July 31, 2020. She signed a document on July 17, 2019, indicating she was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of

the document, which was separate from the contract for hire. The claimant completed her assignment on January 22, 2020, but did not seek reassignment from the employer.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was determined to be \$270.00. The claimant received benefits of \$270.00 per week from March 29, 2020, to the week ending April 25, 2020. This is a total of \$1,080.00 in state unemployment insurance benefits after the separation from employment. She also received \$2,400.00 in Federal Pandemic Unemployment Compensation for the four-week period ending April 25, 2020.

On April 21, 2020, the employer called the claimant about an assignment at Abstract Title. The claimant was assigned to work at Abstract Title from April 27, 2020, through July 31, 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.

The claimant was not working with the employer from February 14, 2020, through July 29, 2020. This is more than four weeks. The claimant was totally unemployed during this period. 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). The issue becomes whether the claimant is able to and available for work.

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. 871-24.23(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.

871 IAC 24.23(17) provides:

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

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 did not appear for the hearing and meet her burden of proof to show she was able and available for work after March 29, 2020.

When employees unreasonably limit their working hours, they are considered to be unavailable for work. The employer had work available for the claimant, but she limited her availability. The claimant is disqualified from receiving unemployment insurance benefits as of March 29, 2020, due to unavailability for work.

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 \$1,080.00 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. Therefore, the claimant is overpaid unemployment insurance 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...

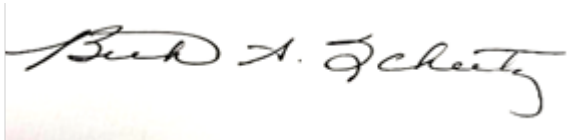
The claimant has been disqualified from receiving regular unemployment insurance benefits. The claimant has received \$2,400.00 in Federal Pandemic Unemployment Compensation. She is not eligible to receive Federal Pandemic Unemployment Compensation if she is not eligible to receive state unemployment insurance benefits. Therefore, she is overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation.

**DECISION:**

The July 14, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective March 29, 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 is overpaid \$1,080.00 in state unemployment insurance benefits and \$2,400.00 in Federal Pandemic Unemployment Compensation.

*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>.



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August 21, 2020  
Decision Dated and Mailed

bas/scn