

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASLYN G STEPHEN
Claimant

SLB OF IOWA LC
Employer

APPEAL 20A-UI-04376-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (4/R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able and Available
871 IAC 24.24.23(26) – Same Hours and Wages – Still Employed
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

SLB of Iowa (employer) appealed a representative's May 15, 2020, decision (reference 01) that concluded Jaslyn Stephen (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 June 8, 2020. The claimant participated personally. The employer participated by Karen Beard, Human Resources Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is able and available for work and whether she was partially or temporarily unemployed.

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 May 22, 2018, as a part-time associate. The employer closed the dining room due to the governor's order during the pandemic. The employer did not schedule her to work for the two-week period ending April 11, 2020. She filed her claim for unemployment insurance benefits with an effective date of March 15, 2020, and her weekly benefit amount (WBA) was determined to be \$143.00.

For the seven-week period ending May 2, 2020, the claimant reported she had no earnings because she was only reporting wages for a different employer. The employer's records show the claimant earned \$10.75 per hour and worked the following:

For the week ending March 21, 2020, the claimant worked 3.81 hours and earned \$40.95.

For the week ending March 28, 2020, the claimant worked 5.12 hours and earned \$55.04.

For the week ending April 4, 2020, the claimant worked no hours and earned \$00.00.

For the week ending April 11, 2020, the claimant worked no hours and earned \$00.00.

For the week ending April 18, 2020, the claimant worked 8.98 hours and earned \$96.53.
For the week ending April 25, 2020, the claimant worked 7.83 hours and earned \$84.17.
For the week ending May 2, 2020, the claimant worked 12.89 hours and earned \$138.56.

For the week ending May 9, 2020, the claimant reported she earned \$250.00. The employer's record showed that she worked 14.57 hours and earned \$156.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able 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 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 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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 was hired as a part-time worker. The employer certified that her hours were reduced by the employer due to the pandemic. For the two-week period ending April 11, 2020, the claimant was totally unemployed. The claimant was able and available for work as of March 15, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

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 improperly reported her gross income to the department for the eight-week period ending May 9, 2020. This has resulted in an overpayment of benefits. The claimant was overpaid unemployment insurance benefits pursuant to Iowa Code section 96.3-7 for that period.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she may be overpaid 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...

If the claimant is disqualified from receiving regular unemployment insurance benefits, then she is also disqualified from receiving Federal Pandemic Unemployment Compensation. She would be required to repay those benefits as well.

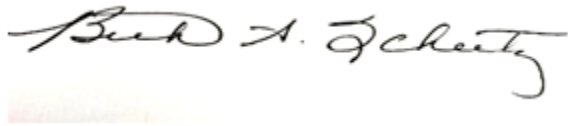
The issue of whether claimant has been overpaid federal pandemic unemployment compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision. The issue of the amount of overpayment of unemployment insurance benefits is remanded for determination.

DECISION:

The representative's May 15, 2020, decision (reference 01) is modified in favor of the appellant. The claimant was able and available for work as of March 15, 2020. The claimant has

incorrectly reported her wages. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether claimant has been overpaid federal pandemic unemployment compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision. The issue of the amount of overpayment of unemployment insurance benefits is remanded for determination.

A handwritten signature in black ink, reading "Beth A. Scheetz". The signature is written in a cursive style with a large, stylized 'B' and 'S'.

Beth A. Scheetz
Administrative Law Judge

June 5, 2020
Decision Dated and Mailed

bas/sam