

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRYAN R THURM**  
Claimant

**APPEAL NO. 20A-UI-13279-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE-HOLY FAMILY CATHOLIC**  
Employer

**OC: 04/05/20**  
**Claimant: Respondent (4)**

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Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.1(A)(37) – Total and Partial Unemployment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated October 14, 2020, reference 03, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on December 18, 2020. Claimant participated personally and with attorney Joanie Grife. Employer participated by hearing representative Paul Jahnke and witnesses Mary Sulentic and Jeff Rusch.

**ISSUES:**

Whether claimant is able and available for work?  
Whether claimant has been overpaid state unemployment benefits?  
Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

The claimant previously worked for employer in this matter. The separation issue between the parties was already addressed in appeals No. 20A-UI-09314. This matter concerns only the claimant's being able and available for work from the time of his filing of the original claim in this matter until the date of his discharge on April 27, 2020.

Claimant worked as a full time maintenance worker for employer from February 2017 until April 29, 2020. Claimant and other employees were laid off from work because of Covid from April 5, 2020 until April 27, 2020. On April 27, 2020 claimant returned to work and worked on that date. Claimant called off work on April 28-30, 2020 citing transportation problems. Employer terminated claimant on April 30, 2020.

Claimant stated that he had car troubles that were fixed by Friday, May 1, 2020. Since that date he has been able and available for work.

Employer stated that he was frustrated by the decision as employer's witnesses were ready for the fact finding interview, but were not called.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for the week ending May 2, 2020. Claimant was able and available from the date of April 5, 2020 through April 25, 2020 as claimant was laid off from work for Covid-related reasons. The week of April 26, 2020 through May 2, 2020 claimant was not able and available for work for the majority of the week as claimant did not have transportation to get him to work. After this date, claimant remained 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 96.3(7) provides, in pertinent part:

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant is shown to be able and available for the work for the weeks prior to the week ending May 2, 2020 and after that week, benefits are allowed for those periods. As claimant was not able and available for work for the week of April 26 through May 2, 2020, benefits are not allowed for that week. Benefits paid are overpayments.

Claimant has received state unemployment benefits in this matter for the week of April 26-May 2 of \$432.00. Said amount is an overpayment.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter for the week of April 26-May 2 of \$600.00. Claimant is not eligible to receive this payment.

**DECISION:**

The October 14, 2020, reference 03, decision is amended in favor of appellant. The claimant is not able and available for the week of April 26-May 2, 2020. Claimant is overpaid state and FPUC benefits for this week. Claimant is able and available and eligible for benefits for the weeks other than this week.



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Blair A. Bennett  
Administrative Law Judge

January 8, 2021  
Decision Dated and Mailed

bab/mh