

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEASHA B LAHEY
Claimant

O'DONNELL ACE HARDWARE INC
Employer

APPEAL 20A-UI-09428-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
871 IAC 24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Eligibility Conditions

STATEMENT OF THE CASE:

Aleasha Lahey (claimant) appealed a representative's August 6, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of April 12, 2020, because a leave of absence was granted by O'Donnell Ace Hardware (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 23, 2020. The claimant participated personally. The employer participated by Sheila O'Donnell, Human Resources Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work and whether the claimant was on an approved leave of absence.

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 February 9, 2018, as a full-time cashier. In August 2019, the claimant started a second job at Skip's as a part-time employee. The claimant resigned from her full-time position to take a part-time cashier position. The employer did not guarantee the claimant a certain number of hours per week as a part-time employee.

The claimant asked for a leave of absence from both jobs starting on March 24, 2020, because her father passed away. While on leave, the claimant was furloughed from Skip's. On April 12, 2020, Skip's separated the claimant from employment. The claimant started work again for the employer on May 5, 2020. She asked for a second leave of absence from May 6, 2020, through May 26, 2020.

The claimant returned to work on May 27, 2020, working approximately 13.5 hours per week. Her hourly rate of pay was \$12.75. She earned roughly \$172.00 per week. The claimant quarantined due to the Covid-19 pandemic for the two-week period ending August 15, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2020. Her base period of employment was from the first quarter of 2019, through the fourth quarter of 2019. The claimant had wages from the employer in all four quarters. In the third quarter of 2019, she had \$589.00 in wages from Skip's. In the fourth quarter of 2019, she had \$3,495.00 in wages from Skip's. There were no other wages in the claimant's base period. Her weekly benefit amount was determined to be \$304.00.

The claimant received benefits from April 12, 2020, to the week ending September 19, 2020. This is a total of \$4,234.00 in state unemployment insurance benefits after the separation from employment. She also received \$9,000.00 in Federal Pandemic Unemployment Compensation for the fifteen-week period ending July 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the leave of absence and is not eligible to receive unemployment insurance benefits from April 12, 2020, through May 23, 2020, and from August 2, 2020, through August 15, 2020.

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(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

During the nine-week period ending August 1, 2020, and the five-week period ending September 19, 2020, the employer paid the claimant the same wages she would normally receive. The employer is a base period employer. She cannot be considered totally, partially, or temporarily employed when she performs the same work for the same wages for the employer. The employer is a base period employer and the employer is not chargeable. Therefore, the claimant is not eligible to receive unemployment insurance benefits nine-week period ending August 1, 2020, and the five-week period ending September 19, 2020. Benefits are denied.

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.

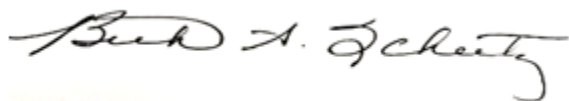
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's August 6, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 12, 2020. The employer is not chargeable.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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

September 29, 2020
Decision Dated and Mailed

bas/mh