

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELINE TAYLOR
Claimant

MARKETLINK INC
Employer

APPEAL 20A-UI-05321-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The claimant/appellant, Jacqueline Taylor, filed an appeal from the June 2, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2020. The claimant participated personally. The employer, Marketlink Inc., participated by writing only.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective April 12, 2020?

Is the claimant overpaid benefits?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment for this employer January 24, 2017 as a full-time sales agent.

The claimant established her claim for unemployment insurance benefits with an effective date of April 12, 2020, when her employer closed its premises due to COVID-19. Employees were permitted to work from home, if they had available internet connection of a certain speed. The claimant had just moved to her new home effective April 1, 2020. Unbeknownst to her, her complex furnished internet to its tenants but it did not meet the specifications needed for the claimant to telework. The claimant made multiple phone calls to her landlord, Mediacom and Century Link, before being informed she could not install new internet to override the building’s provided internet. Consequently, she was unable to perform work from April 12- May 11, 2020.

Claimant then returned to the employer office and performed work May 12-May 27, 2020. Employer had reduced hours available and claimant reported wages earned each week. She received partial benefits during this period.

On June 1, 2020, her child tested positive for COVID-19. On June 4, 2020, she tested positive for COVID-19, and at the date of hearing, July 6, 2020, was still recovering. She has not been symptom-free for 72 hours and cannot return to work.

Despite being denied benefits after the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their claims were pending due to the backlog caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending the initial decision. The administrative record shows, claimant filed for and received a total of \$1,824.00 in unemployment insurance benefits for the weeks between April 12, 2020 and May 23, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$3,600.00 in federal benefits for the six-week period ending May 23, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able to and available for work April 12-May 31, 2020. She is not able to and available for work effective June 1, 2020.

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 96.4(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 96.1A, subsection 38, paragraph "b", subparagraph (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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

For the period of April 12-May 31, 2020:

From April 12 through May 11, 2020, the claimant was unable to work because the employer temporarily closed its premises due to COVID-19. While the employer did not allow the option to work remotely, it did not provide the technical support required to perform job duties, and despite the claimant's good faith efforts, she was unable to obtain the necessary internet connection to be able to work remotely. This was not a job requirement at the time of hire, and not the fault of the claimant.

Because she performed no work during this period, and she imposed no restrictions on her ability to work full-time this period, the administrative law judge concludes that she was able to and available for work, and therefore eligible for benefits April 12-May 11, 2020, provided she meets all other requirements. There is no overpayment of regular unemployment insurance benefits for this period.

From May 12, 2020 through May 27, 2020, the claimant performed all available work when the

employer opened with reduced hours. During this period, the claimant did not work full-time because full-time work was not available. She is considered partially unemployed during this period for any week that she earned less than her weekly benefit amount plus fifteen dollars. Benefits are allowed May 12-27, due to the claimant being partially unemployed. There is no overpayment of regular unemployment insurance benefits for this period.

The issue of whether the employer will be charged for benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for an initial determination on the allocation of charges.

Effective June 1, 2020:

In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law. The claimant is not able to and available for work due to being under medical care and not being released by a doctor. Benefits are denied until she is released without restrictions. The claimant did not receive benefits during this period and therefore there is no overpayment to address.

Even though the claimant is not eligible for regular unemployment insurance benefits effective June 1, 2020 under state law, he/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 final issue to address is whether the claimant is eligible for 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...

For the period of April 12-May 31, 2020, the claimant is eligible for regular state unemployment insurance benefits. Accordingly, during this period, she is also eligible for FPUC.

Effective June 1, 2020, the claimant is not eligible for regular state unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC).

DECISION:

The June 2, 2020 (reference 01) initial decision is modified in favor of the claimant/appellant.

The claimant was able to and available for work April 12-May 31, 2020. Benefits are allowed for this period.

Benefits are denied effective June 1, 2020, because she is not able to and available for work. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

There is no overpayment of benefits. The claimant is also eligible for FPUC April 12-May 31, 2020.

REMAND:

The issue of whether the employer will be charged for benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for an initial determination on the allocation of charges.

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits effective June 1, 2020. 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.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:

www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

Jennifer L. Beckman

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July 21, 2020
Decision Dated and Mailed

jlb/sam