

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ELIZABETH M BOGGS**

Claimant

**APPEAL 20A-UI-04440-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**

Employer

**OC: 03/15/20**

**Claimant: Appellant (1)**

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  
871 IAC 24.22(2)f – Part-Time Worker – Able and Available  
Iowa Code § 96.3-7 – Overpayment  
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Elizabeth Boggs (claimant) appealed a representative's May 14, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Kwik Trip (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 9, 2020. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant is available for work, 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 claimant was hired on September 14, 2020, as a part-time cashier. The claimant's weekly hours increased with the employer from twenty to as many as thirty-five.

During the week ending March 7, 2020, the claimant was laid off from her other part-time job at Hoq. She filed her claim for unemployment insurance benefits with an effective date of March 15, 2020. The claimant was told by a relative that she only needed to report her wages from Hoq on her weekly claim.

The claimant filed her weekly claim for benefits from March 15, 2020, through May 9, 2020. Each week the claimant was asked if she worked during the week. If the claimant did work, she

was asked to provide the amount of gross wages. For the eight-week period ending May 9, 2020, the claimant answered that she did not work and had no earnings. Based on her answers she received \$2,448.00 in unemployment insurance benefits for the eight-week period ending May 9, 2020. She received \$3,600.00 in Federal Pandemic Unemployment Compensation for the six-week period ending May 9, 2020.

For the two-week period ending March 26, 2020, the claimant had net income from the employer of \$759.88. For the two-week period ending April 9, 2020, the claimant had net income from the employer of \$841.78. For the two-week period ending April 23, 2020, the claimant had net income from the employer of \$813.14. For the two-week period ending May 7, 2020, the claimant had net income from the employer of \$737.49. The claimant averaged \$394.00 net pay over the eight-week period. As of the week ending May 16, 2020, she started reporting her income and was monetarily ineligible to receive unemployment insurance benefits.

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

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant cannot be considered totally unemployed for the weeks ending, because she worked and should have reported wages for those weeks. The next issue is whether the

claimant was partially unemployed for the eight-week period ending May 9, 2020. The claimant cannot be considered to be unemployed within the meaning of the law because the claimant was hired to work only part-time hours, was not guaranteed full-time hours, and the wage history consists of only part-time wages.

When a worker is hired to work part-time, the implied agreement is that full-time work will not be regularly available and hours will vary depending on business needs. The claimant's base period consists only of part-time wages. Since the employer continues to provide part-time hours and the claimant is currently employed under the same hours and wages as contemplated when work began, the claimant cannot be considered partially unemployed. Benefits are denied effective March 15, 2020.

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 \$2,448.00 in unemployment insurance benefits from March 15, 2020, to May 9, 2020. This was during the period of time the claimant has been determined to be ineligible to receive 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 is overpaid those 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

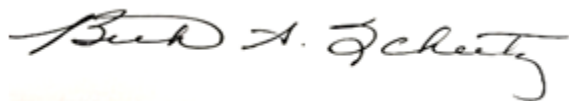
(2) Repayment.-- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

The claimant has been disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits, the claimant received an additional \$3,600.00 in Federal Pandemic Unemployment Compensation from March 29, 2020 through May 9, 2020. The claimant is required to repay those benefits as well.

**DECISION:**

The representative's May 14, 2020, decision (reference 02) is affirmed. The claimant is still employed at the same hours and wages and is not partially unemployed. Benefits are denied effective May 14, 2020.

The claimant is overpaid unemployment insurance benefits of \$2,448.00 from March 15, 2020 through May 9, 2020. The claimant is overpaid Federal Pandemic Unemployment Compensation of \$3,600.00 from March 29, 2020 through May 9, 2020.



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Beth A. Scheetz  
Administrative Law Judge

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June 24, 2020  
Decision Dated and Mailed

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