

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN CLEMENTS

Claimant

WALMART INC

Employer

APPEAL 20A-UI-04489-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Megan Clements (claimant) appealed a representative's decision dated May 20, 2020, reference 01 that concluded ineligibility to receive unemployment insurance benefits based on availability to work with Walmart (employer). A telephone hearing was held on June 9, 2020, pursuant to due notice. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is able and 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 in August 2010, as a full-time cake decorator at Sam's Club. The claimant has four children aged thirteen, eleven, five, and one. She had always had daycare arranged for the children.

For the week ending March 21, 2020, spring break, the claimant arranged to have someone watch her four children while she worked. After spring break, her daycare and school closed due to the pandemic. The claimant asked the employer for a leave of absence so she could find childcare. The employer granted the claimant's request.

The claimant filed a claim for unemployment insurance benefits with an effective date of March 22, 2020. She received \$2,273.00 in unemployment benefits from March 22, 2020, through May 9, 2020. She also received \$3,600.00 in Federal Pandemic Unemployment

Compensation from March 29, 2020, to May 9, 2020. The claimant found childcare and returned to work on May 10, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge finds the claimant is not able and available for work.

Iowa Admin. Code r. 871 IAC 24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care

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.

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). 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 needed to care for her children until she could find a new childcare provider. When an employee is spending working hours caring for children, she is considered to be unavailable for work. The claimant did not have child care. She is considered to be unavailable for work. 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 March 22, 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 \$2,273.00 in unemployment insurance benefits from March 22, 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

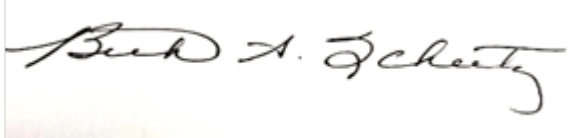
(2) Repayment.-- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

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 for the six-week period ending May 9, 2020. The claimant is required to repay those benefits as well.

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 due to disqualifying separations, 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>.

DECISION:

The representative's May 20, 2020, decision (reference 01) is affirmed. The claimant is not able and available for work as of March 22, 2020. The claimant was overpaid unemployment insurance benefits in an amount of \$2,273.00. She was overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

June 23, 2020
Decision Dated and Mailed

bas/scn