

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEANNE WHITE
Claimant

D OF S FOODS INC
Employer

APPEAL 20A-UI-04582-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/29/20
Claimant: Respondent (2)**

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
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
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:

D of S Foods (employer) appealed a representative's May 14, 2020, decision (reference 01) that concluded Jeanne White (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Kristopher Chamberlain. The administrative law judge took official notice of the administrative file.

ISSUES:

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 April 9, 2019, as a part-time crew person. She was scheduled to work on Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays from 6:00 a.m. to 1:00 p.m. She was paid \$12.50 per hour.

The claimant filed a claim for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was determined to be \$329.00. For the week ending April 4, 2020, the claimant reported she earned \$416.00. The employer's records show that she earned \$421.00. The claimant received no unemployment insurance benefits. For the week ending April 11, 2020, the claimant reported she earned \$397.00. The employer's records show that she earned \$395.00. The claimant received no unemployment insurance benefits. For the week ending April 18, 2020, the claimant reported she earned \$328.00. The employer's records show that she earned \$326.00. The claimant received partial benefits of \$83.00 and

Federal Pandemic Unemployment Compensation of \$600.00. For the week ending April 25, 2020, the claimant reported she earned \$442.00. The employer's records show that she earned \$413.00. The claimant received no unemployment insurance benefits. For the week ending May 2, 2020, the claimant reported she earned \$478.00. The employer's records show that she earned \$433.00. The claimant received no unemployment insurance benefits.

The claimant worked all the hours the employer offered her except for April 13, 2020. The claimant asked for April 13, 2020 off. If she would have worked on April 13, 2020, she would have earned \$81.25. She did not apply for unemployment insurance benefits after the week ending May 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is still employed at the same hours and wages as of March 29, 2020.

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 96.4(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.

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). The claimant was hired as a part-time worker. The claimant's hours were not reduced by the employer. The claimant reduced her hours. The claimant is not eligible for unemployment insurance benefits as of March 29, 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 \$83.00 in unemployment insurance benefits for the week ending April 18, 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 eligible for FPUC and whether claimant has been overpaid FPUC. For the reasons that follow, the administrative law judge concludes claimant was not eligible for FPUC and was overpaid FPUC, which must be repaid.

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

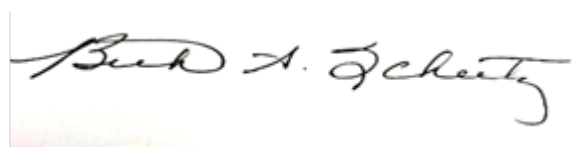
(2) Repayment.-- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

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 \$600.00 in Federal Pandemic Unemployment Compensation for the week ending April 18, 2020. The claimant is required to repay those benefits as well.

DECISION:

The representative's May 14, 2020, decision (reference 01) is reversed. The claimant is not eligible for unemployment insurance benefits as of March 29, 2020. The claimant is overpaid unemployment insurance benefits of \$83.00 and Federal Pandemic Unemployment Compensation of \$600.00.

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>.



Beth A. Scheetz
Administrative Law Judge

June 25, 2020
Decision Dated and Mailed

bas/scn