

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**LORENA LEYVA GARCIA**  
Claimant

**APPEAL NO. 20A-UI-07736-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 04/19/20**  
**Claimant: Respondent (4R)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment  
Iowa Code Section 96.3(7) - Recovery of Overpayment  
public Law 116-136, Section 2104(b) Federal Pandemic Unemployment Compensation -

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 2, 2020, reference 01, decision that allowed benefits to the claimant effective April 19, 2020, as long as the claimant met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work and available for work but on a short-term layoff. After due notice was issued, a hearing was held on August 13, 2020. Claimant Lorena Leyva Garcia participated. Monica Dyar, Human Resources Supervisor, represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. Spanish-English interpreters Esrid Ordoney and Enrique Cuba of CTS Language Link assisted with the hearing.

**ISSUES:**

Whether the claimant was able to work and available for work from April 19, 2020 through June 13, 2020.

Whether the claimant was partially and/or temporarily unemployed from April 19, 2020 through June 13, 2020.

Whether the claimant was overpaid regular benefits for the period of April 19, 2020 through June 13, 2020.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation for the period of April 19, 2020 through June 13, 2020.

Whether the employer's account may be charged for benefits paid to the claimant for the period of April 19, 2020 through June 13, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: claimant Lorena Leyva Garcia established an original claim for unemployment insurance benefits that was effective April 19, 2020. Iowa Workforce Development set Ms. Leyva Garcia's weekly unemployment insurance benefit amount for regular benefits at \$481.00. West Liberty Foods,

L.L.C. is the sole base period employer. Ms. Leyva Garcia has been employed by West Liberty Foods since 2013. During all relevant times, Ms. Leyva Garcia has been a full-time Slicer Tech. Her usual work hours are 3:30 p.m. to about 12:45 a.m. Monday through Friday. Ms. Leyva Garcia's wage is \$19.25 per hour. Once Ms. Leyva Garcia established her claim for benefits, she made weekly claims for the eight weeks between April 19, 2020 and June 13, 2020.

In April 2020, some of the employer's production lines slowed due to a COVID-19 decrease in customer orders. However, Ms. Leyva Garcia's line continued production for all but four days.

During the week of April 19-25, 2020, the employer only had 35.42 hours of work available for Ms. Leyva Garcia. Ms. Leyva Garcia worked just 19.55 hours and earned \$376.32 in wages. Ms. Leyva was absent for all of one day and a substantial portion of another. As a result, Ms. Leyva missed out on the additional 15.87 hours of work the employer had for her that week, work that would have paid an additional \$305.50. The available wages would have totaled \$681.82, well above Ms. Leyva Garcia's \$481.0 weekly benefit amount plus \$15.00.

During the week of April 26 through May 2, 2020, Ms. Leyva Garcia worked 16.15 hours and earned \$297.48. Ms. Leyva Garcia called in absences for four days that week and thereby missed out on 32 hours of work, which would have paid an additional \$616.00.

During the week of May 3-9, 2020, Ms. Leyva Garcia worked all of her scheduled full-time hours and earned \$671.23.

During the week of May 10-16, Ms. Leyva Garcia worked 8.45 hours and earned \$154.12. Ms. Leyva Garcia called in absences for four days that week and thereby missed out on an additional 32 hours of work, which would have paid an additional \$616.00.

During the week of May 17-23, 2020, the employer had 42.77 hours of work for Ms. Leyva Garcia, but Ms. Leyva Garcia worked only 8.77 hours. On May 19, 2020, Ms. Leyva Garcia notified the employer that a family member she had hosted the preceding weekend had tested positive for COVID-19. Based on public health guidelines the employer was following at the time, the employer barred Ms. Leyva Garcia from the workplace for seven days. The employer provided compensation for 34 hours of missed work at 50% of the regular wage, \$327.25. Ms. Leyva Garcia's wages totaled \$470.04. The employer expected Ms. Leyva Garcia to return to work on Tuesday, May 26, 2020, but Ms. Leyva Garcia did not return to work on May 26.

During the week of May 24-30, 2020, Ms. Leyva Garcia worked 8.5 hours, for which she earned \$163.63. Ms. Leyva Garcia was absent from at least an additional 32 hours of work which would have provided \$660.00 in additional pay. In connection with the lost work hours, the employer paid Ms. Garcia \$77.52.

During the two-week period of May 31, 2020 through June 13, 2020, the employer had full-time work for Ms. Leyva Garcia, but Ms. Leyva Garcia called in absences for each day and earned no wages.

In connection with her claim for unemployment insurance benefits, Ms. Leyva Garcia reported wages and received regular benefits as follows:

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>Benefits Paid</u>
4/25/20	\$365.00	\$236.00
5/2/20	\$295.00	\$206.00
5/9/20	\$671.00	0.0

5/16/20	\$154.00	\$447.00
5/23/20	\$160.00	\$441.00
5/30/20	0.0	\$481.00
6/6/20	\$365.00	\$236.00
6/13/20	\$365.00	\$236.00

For each of the seven weeks for which Iowa Workforce Development paid regular benefits, the Agency also paid \$600.00 in Federal Pandemic Unemployment Compensation. The regular benefits totaled \$2,383.00. The FPUC benefits totaled \$4,200.00.

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

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. 871-24.22(2) provides, in pertinent part, as follows:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

If a claimant to whom 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. Iowa Code section 96.7(2)(a)(2)(a).

During the week that ended April 25, 2020, the employer had 35.42 hours of work available for the claimant. The claimant worked the majority of the hours by working 19.55 hours. Thus, the claimant met the availability requirement. However, because the employer had sufficient work available to provide wages that exceeded the weekly benefit amount plus \$15.00, the claimant cannot be deemed partially unemployed that week and is not eligible for benefits for that week that ended April 25, 2020.

During the week that ended May 2, 2020, the employer had more than full-time work available for the claimant, 48.15 hours. But the claimant was absent for 32 of those hours. Claimant was not available for work that week within the meaning of the law. Nor was the claimant partially unemployed that week. The claimant is not eligible for benefits for the week that ended May 2, 2020.

During the week that ended May 9, 2020, claimant worked full-time hours and received full-time wages. The claimant did not meet the "availability" requirement and is not eligible for benefits for the week that ended May 9, 2020.

During the week that ended May 16, 2020 the employer had full-time work available for the claimant, 40.45 hours, of which the claimant only worked 8.45 hours. Claimant was not

available for work that week within the meaning of the law. Nor was the claimant partially unemployed that week. The claimant is not eligible for benefits for the week that ended May 16, 2020.

The claimant was aware of the employer's policy, based on public health agency guidance, that would bar her from the workplace for a week if she had been exposed to COVID-19. Nonetheless, during the weekend of May 16-17, 2020, in the midst of the heavily publicized pandemic, the claimant unreasonably elected to host out-of-state family members, thereby exposing herself and her household to COVID-19. Though there is an argument to be made that the claimant rendered herself unavailable for work for the week that ended May 23, 2020, the employer temporarily laid off the claimant for one week, effective May 19, 2020. Based on the temporary layoff, the claimant is eligible for benefits for the week that ended May 23, 2020, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant for that week, pending remand to the Iowa Workforce Development Tax Bureau for determination of whether the charge may be waived in light of the COVID-19 basis for the temporary layoff. The administrative law judge notes that the claimant misrepresented her wages for the week by reporting only \$160.00, when the employer paid her wages totaling \$470.04. The claimant's eligibility for regular benefits for the week that ended May 23 2020 is \$132.00, not \$441.00.

During the week that ended May 30, 2020, the employer again had full-time hours available for the claimant, but the claimant elected only to work 8.5 of those hours. Claimant was not available for work that week within the meaning of the law. Nor was the claimant partially unemployed that week. The claimant is not eligible for benefits for the week that ended May 30, 2020.

During the weeks that ended June 6 and June 13, 2020, the employer had full-time hours available for the claimant, but the claimant elected not to report any of that work. The claimant was not available for work within the meaning of the law during those two weeks. Nor was the claimant partially unemployed or temporarily unemployed during those weeks. The claimant is not eligible for benefits for the weeks that ended June 6 and June 13, 2020.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

The regular benefits the claimant received for the weeks that ended April 25, May 2, May 16, May 30, June 6 and June 13, 2020 are an overpayment of benefits that the claimant must repay. Those overpaid benefits total \$1,942.00. The \$309.00 in excess regular benefits the claimant received for the week that ended May 23, 2020 is also an overpayment that the claimant must repay. The combined total overpayment of regular benefits for the seven weeks is \$2,251.00.

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...

Because this decision disqualifies the claimant for regular unemployment insurance (UI) benefits for the weeks that ended April 25, May 2, May 16, May 30, June 6 and June 13, 2020, the claimant is also disqualified for the \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that she received for those six week. The claimant must repay the overpaid FPUC benefits.

#### **DECISION:**

The July 2, 2020, reference 01, decision is modified in favor of the employer/appellant as follows. During the week that ended April 25, 2020, the claimant met the availability requirement, but was not partially unemployed within the meaning of the law and was not eligible for unemployment insurance benefits. During the weeks that ended May 2, May 16, May 30, June 6 and June 13, 2020, the claimant was not available for work, not temporarily and/or partially unemployed, and not eligible for benefits. During the week that ended May 23, 2020 the claimant was temporarily and/or partially unemployed, but only eligible for \$132.00, not \$441.00, provided she met all other eligibility requirements. The employer's account may be charged for benefits for the week ending May 23, 2020, pending remand to the Iowa Workforce Development Tax Bureau for determination of whether the charge for that week may be waived in light of the COVID-19 connection. The employer's account shall otherwise not be charged for benefits for the period of April 19 2020 through June 13, 2020. The claimant is overpaid \$2,251.00 in benefits for seven weeks between April 19, 2020 and June 13, 2020. The claimant is overpaid \$3,600.00 in FPUC benefits for the weeks that ended April 25, May 2, May 16, May 30, June 6 and June 13, 2020. The claimant must repay the overpaid regular benefits and FPUC benefits.

This matter is **remanded** to the Iowa Workforce Development Tax Bureau for determination of whether the employer charge for the week that ended May 23, 2020 may be waived.



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James E. Timberland  
Administrative Law Judge

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October 6, 2020  
Decision Dated and Mailed

jet/sam

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 under state law 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.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**