

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD D CUMMINS
Claimant

UNIVERSAL PROTECTION SERVICE LLC
Employer

APPEAL 20A-UI-06463-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
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:

Donald Cummins (claimant) appealed a representative's June 11, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of April 12, 2020, because a leave of absence was granted by Universal Protection Service (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 23, 2020. 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.

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 or about August 20, 2016, as a full-time security guard. The claimant spoke with the employer's human resources department and was granted twelve weeks of Family Medical Leave (FMLA). The FMLA started on or about April 20, 2020, and was set to expire on or about July 13, 2020.

In May 2020, the employer called the claimant and asked if he was going to return to work or if he was going to give two-week's notice of resignation. The claimant said he could not answer that question. The employer terminated the claimant after the call.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2020. His weekly benefit amount was determined to be \$282.00. The claimant received benefits of

\$282.00 per week from April 17, 2020, to the week ending May 23, 2020. This is a total of \$1,410.00 in state unemployment insurance benefits after the separation from employment. He also received \$3,000.00 in Federal Pandemic Unemployment Compensation for the five-week period ending May 23, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a medical leave of absence or FMLA and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits from April 12, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he 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 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 \$1,410.00 in state unemployment insurance benefits. This was during the period of time the claimant has been determined to be ineligible to receive benefits. This decision denies benefits. If this decision becomes final or if the claimant is not eligible for PUA, the claimant will have an overpayment of benefits.

The final issue is whether the claimant is eligible for or overpaid 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...

The claimant has been disqualified from receiving regular unemployment insurance benefits. The claimant has received \$3,000.00 in Federal Pandemic Unemployment Compensation. If this decision becomes final or if the claimant is not eligible for PUA, the claimant will have an overpayment of benefits.

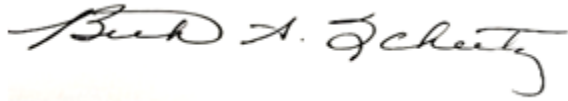
DECISION:

The representative's June 11, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 12, 2020

The claimant has received \$1,410.00 in state unemployment insurance benefits and \$3,000.00 in Federal Pandemic Unemployment Compensation. This decision denies benefits. If this decision becomes final or if the claimant is not eligible for PUA, the claimant will have an overpayment of benefits.

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, 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

July 30, 2020
Decision Dated and Mailed

bas/sam