

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GUNTHER W ANDERSON

Claimant

APPEAL NO. 20A-UI-05044-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONAGRA FOODS PACKAGED FOODS LL

Employer

OC: 03/29/20

Claimant: Respondent (2)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.19(38) – Total and Partial Unemployment

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 21, 2020, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on July 1, 2020. Claimant participated personally and was represented by Robert Cale. Employer participated by Sarah Yaley and Hillary Carter.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The Unemployment Insurance Decision in this matter was sent out on May 21, 2020. The appeal of that decision was filed by employer on June 1, 2020. May 31, 2020 fell on a Sunday. The claimant currently works for Conagra Foods, and has since 2003.

Claimant asked for and was granted a leave of absence effective April 2, 2020. Claimant requested this leave as he has numerous people within his house that are at risk for bad

outcomes were they to contract the Covid 19 virus. Claimant has not been able and available for work since that time. Claimant continues to be on leave to this date, although on June 15, 2020 employer changed the name of the leave of absence to claimant being placed on an unpaid status. Claimant does still retain his job though.

Claimant has received state unemployment benefits in this matter of \$7,639.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$7,800.00.

REASONING AND CONCLUSIONS OF LAW:

Appeal in this matter was timely filed.

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work.

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 96.3(7) provides, in pertinent part:

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant in this matter has made a choice that it is not in his family's best interest for claimant to put himself at higher risk to contract Covid. Because the claimant has not made himself available for the work that continues in an ongoing fashion, claimant does not satisfy the

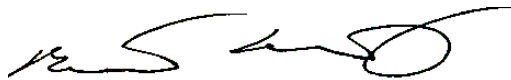
requirement that he be able and available for work to be allowed to receive state benefits. Benefits are denied.

Even though 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. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The administrative law judge will not make a decision on whether claimant has been overpaid benefits for what she has received thus far, as she may be eligible for PUA, making such a decision unnecessary.

DECISION:

The May 21, 2020, reference 01, decision is reversed. The claimant is not able and available for work effective April 2, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time claimant is able to and available for work. Claimant may have to repay the benefits received thus far, unless claimant applies and is approved for PUA, as directed in the paragraph below.



Blair A. Bennett
Administrative Law Judge

July 9, 2020
Decision Dated and Mailed

bab/scn

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>.