

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PENNY JARVIS**  
Claimant

**APPEAL 20A-UI-07716-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEDONA STAFFING INC**  
Employer

**OC: 04/12/20**  
**Claimant: Respondent (2)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.3-7 – Overpayment  
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Sedona Staffing (employer) appealed a representative's July 1, 2020, decision (reference 02) that concluded Penny Jarvis (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 August 13, 2020. The claimant participated personally. The employer participated by Colleen McGuinty, Unemployment Benefits Administrator.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

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 employer is a temporary employment service. The claimant performed services from July 29, 2019, through April 9, 2020. She signed a document on July 10, 2019, indicating she was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document did

indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document, which was separate from the contract for hire.

On April 13, 2020, the claimant appeared at her assignment with Covid-19 symptoms. The assigned employer told her to leave and see a doctor. She could not work at that location and her assignment ended. On April 15, 2020, the claimant saw a doctor. She had a fever and cough. The doctor said she had Covid-19-like symptoms. The earliest she could return to work was April 20, 2020. The claimant gave a copy of the doctor's note to the employer.

On May 4, 2020, the claimant notified the employer she was ready to return to work at her previous assignment. The employer told the claimant there was no work available at that assignment. The business closed for a time due to Covid-19. The claimant did not ask for other work. Work was available. On July 9, 2020, the employer contacted the claimant about a position. The claimant started working as a full-time temporary employee at that position on July 20, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2020. Her weekly benefit amount was determined to be \$223.00. The claimant received benefits of \$223.00 per week from April 12, 2020, to the week ending April 25, 2020. This is a total of \$3,345.00 in state unemployment insurance benefits after the separation from employment. She also received \$8,000.00 in Federal Pandemic Unemployment Compensation for the fifteen-week period ending July 25, 2020.

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

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.

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.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The employer had work available for claimant. However, the claimant informed the employer she was unable to work due to being in quarantine for the three-week period ending May 2, 2020. The employer agreed to allow the claimant time off for that reason. The claimant has not established she was able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. The claimant is considered to be on a leave of absence due to being in quarantine and is not available for work for the three-week period ending May 2, 2020.

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). A worker is considered to be unavailable for work when an employee limits working hours for a particular reason. In this case, the claimant limited her working location because she wanted to work at one assignment. Limiting her working location made the claimant unavailable for other work assignments. She was not able and available for work as of May 3, 2020. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she 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 \$3,345.00 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. She is overpaid \$3,345.00 in unemployment insurance 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...

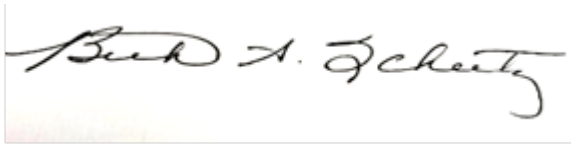
The claimant has been disqualified from receiving regular unemployment insurance benefits. The claimant has received \$9,000.00 in Federal Pandemic Unemployment Compensation. She is overpaid \$9,000.00 in Federal Pandemic Unemployment Compensation.

**DECISION:**

The July 1, 2020, (reference 02) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective April 12, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The claimant is overpaid \$3,345.00 in state unemployment insurance benefits and \$9,000.00 in Federal Pandemic Unemployment Compensation.

*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>.



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Beth A. Scheetz  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

August 20, 2020  
Decision Dated and Mailed

bas/scn