

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANA RADOR
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-04008-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 13, 2020, the claimant filed an appeal from the May 6, 2020, (reference 01) unemployment insurance decision that denied benefits based on a voluntary leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on June 1, 2020. Claimant participated. Employer participated through human resource employee Jeorgie Smith and pharmacy manager Mary Huff and was represented by Barbara Buss. Claimant's Exhibit A was received.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?
Was the claimant overpaid unemployment insurance benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 2, 2014. Claimant last worked as a part-time pharmacy clerk.

Claimant was hospitalized at the end of February 2020 with asthma and pneumonia. Claimant also had high blood pressure. Claimant is 72 years old.

On March 4, 2020, claimant's doctor told her he would not advise her to continue to work.

March 13, 2020, was claimant's last day of work. Claimant asked to be taken off the schedule temporarily due to concerns regarding contracting COVID 19.

On May 11, 2020, claimant's medical provider wrote a note stating claimant is high risk for complications if she contracts COVID 19 and should avoid activities involving close activity with others until community spread is diminished. Working as a pharmacy clerk involves close activity with others.

Since filing this claim for unemployment insurance benefits, claimant has received \$565.00 for the five weeks ending May 2, 2020. Claimant has also received \$3,000.00 in Federal Pandemic Unemployment Compensation (FPUC) for the five weeks ending May 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

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.

Here, employer has work available for claimant. However, claimant informed employer she was unable to work due to underlying health conditions that make her vulnerable for complications if she contracts COVID 19. Employer agreed to allow claimant time off for that reason. Claimant has not established she is 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.

Claimant is considered to be on a leave of absence due to underlying health conditions and taking reasonable precautions due to COVID 19 and is not available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

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

Since the claimant is not eligible to receive regular, state-funded unemployment insurance benefits, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 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.

Since the claimant is not eligible for regular, state-funded unemployment insurance benefits effective March 29, 2020, claimant was overpaid \$565.00 in regular, state-funded unemployment insurance benefits. Claimant is required to repay those benefits.

The administrative law judge additionally concludes claimant has been 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...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, claimant also received an additional \$3,000.00 in FPUC benefits for the five weeks ending May 2, 2020. Claimant is required to repay those benefits.

DECISION:

The May 6, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant is on a voluntary leave of absence due to underlying health conditions and reasonable precautions regarding contraction of COVID 19 and is not eligible for regular, state-funded unemployment insurance benefits during that time period. Claimant was overpaid \$565.00 in state-funded benefits for the five weeks ending May 2, 2020. Claimant was overpaid \$3,000.00 in FPUC benefits for the five weeks ending May 2, 2020. Claimant will have to repay these benefits, **unless she applies for and is approved for PUA by following the instructions below.**



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

June 22, 2020
Decision Dated and Mailed

cal/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 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>.