

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CASEY L HAGANS**

Claimant

**APPEAL 20A-UI-10026-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA KFC INC**

Employer

**OC: 03/29/20**

**Claimant: Appellant (1/R)**

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

**STATEMENT OF THE CASE:**

Casey Hagans (claimant) appealed a representative's August 17, 2020, decision (reference 01) that denied benefits based on his employment with Central Iowa KFC (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 6, 2020. The claimant participated personally. The employer participated by Julie Mangold, Area Supervisor. 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.

**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 April 19, 2017. At that time, he worked thirty to thirty-five hours per week. In November 2019, the employer reduced the claimant's hours based on dependability issues. It scheduled him on Saturdays and paid him \$8.00 per hour. The claimant found a full-time job at Pizza Hut paying \$9.00 per hour. Because of his full-time job, the claimant frequently refused his Saturday hours with the employer. The claimant described himself as an on-call worker for the employer.

In March 2020, the claimant's hours with Pizza Hut were reduced to six hours per week. He was consistently earning \$54.00 per week. The employer continued to schedule the claimant every Saturday and offered other hours. The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. His weekly benefit amount was determined to be \$161.00. He reported net wages rather than gross wages when filing his weekly claims. The claimant received benefits from March 29, 2020, to the week ending August 8, 2020, for a total

of \$2,722.00 in state unemployment insurance benefits since March 29, 2020. He also received \$10,200.00 in Federal Pandemic Unemployment Compensation for the seventeen-week period ending July 25, 2020.

For the week ending April 4, 2020, the claimant reported \$54.00 in wages to the agency and earned at least \$54.00. He received \$134.00 in state unemployment insurance benefits. For the week ending April 11, 2020, the claimant reported \$41.00 in wages to the agency and earned \$122.00. He received \$147.00 in state unemployment insurance benefits. For the week ending April 18, 2020, the claimant reported \$51.00 in wages to the agency and earned \$54.00. The claimant was not available for work hours from the employer. He received \$137.00 in state unemployment insurance benefits. For the week ending April 25, 2020, the claimant reported \$54.00 in wages to the agency and earned \$54.00. The claimant was not available for work hours from the employer. He received \$134.00 in state unemployment insurance benefits. For the week ending May 2, 2020, the claimant reported \$74.00 in wages to the agency and earned \$96.50. He received \$114.00 in state unemployment insurance benefits.

For the week ending May 9, 2020, the claimant reported \$54.00 in wages to the agency and earned \$54.00. The claimant was not available for work hours from the employer. He received \$134.00 in state unemployment insurance benefits. For the week ending May 16, 2020, the claimant reported \$45.00 in wages to the agency and earned \$96.50. He received \$143.00 in state unemployment insurance benefits. For the week ending May 23, 2020, the claimant reported \$45.00 in wages to the agency and earned \$96.50. He received \$143.00 in state unemployment insurance benefits. For the week ending May 30, 2020, the claimant reported \$45.00 in wages to the agency and earned \$96.50. He received \$143.00 in state unemployment insurance benefits.

For the week ending June 6, 2020, the claimant reported \$45.00 in wages to the agency and earned \$96.50. He received \$143.00 in state unemployment insurance benefits. For the week ending June 13, 2020, the claimant reported \$40.00 in wages to the agency and earned \$96.50. He received \$148.00 in state unemployment insurance benefits. For the week ending June 20, 2020, the claimant reported \$00.00 in wages to the agency and earned \$54.00. The claimant was not available for work hours from the employer. He received \$151.00 in state unemployment insurance benefits. For the week ending June 27, 2020, the claimant reported \$40.00 in wages to the agency and earned \$96.50. He received \$148.00 in state unemployment insurance benefits.

For the week ending July 4, 2020, the claimant reported \$40.00 in wages to the agency and earned \$96.50. He received \$148.00 in state unemployment insurance benefits. For the week ending July 11, 2020, the claimant reported \$00.00 in wages to the agency and earned \$54.00. The claimant was not available for work hours from the employer. He received \$151.00 in state unemployment insurance benefits. For the week ending July 18, 2020, the claimant reported \$00.00 in wages to the agency and earned \$54.00. The claimant was not available for work hours from the employer. He received \$151.00 in state unemployment insurance benefits. For the five-week period from July 19, 2020, through August 8, 2020, the claimant reported \$00.00 in wages to the agency. He received \$151.00 weekly in state unemployment insurance benefits.

The claimant stopped appearing for work after the week ending July 25, 2020. He quarantined himself due to a Covid-19 exposure. The employer did not hear from him again. Work was available.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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. 871-24.22(2)i(3) provides:

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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker,

railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

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). The claimant was offered work every week. He cannot be considered temporarily or totally unemployed. The issue becomes whether he was partially unemployed. The claimant was hired as a part-time worker and was still working part-time for the employer until he separated. There has been no change to his hours. Therefore, the claimant is considered to be unavailable for work.

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.

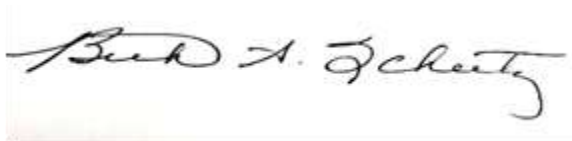
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

#### **DECISION:**

The August 17, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 29, 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 issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

*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>.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

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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

October 8, 2020  
Decision Dated and Mailed

bas/sam