

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JANELL R BARTON
Claimant

WESLEYLIFE
Employer

APPEAL NO. 20A-UI-06940-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary & Partial Unemployment
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits.
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 15, 2020, reference 01, decision that allowed benefits to the claimant effective April 19, 2020, provided she met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on July 31, 2020. Claimant Janell Barton did not provide a telephone number for the hearing and did not participate. Raul Ybanez of Equifax represented the employer and presented testimony from Jennifer Freking. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and KPYX.

ISSUES:

Whether the claimant was able to work and available for work during the period of April 19, 2020 through the benefit week that ended August 1, 2020.
Whether the claimant was temporarily and/or partially unemployed during the period of April 19, 2020 through the benefit week that ended August 1, 2020.
Whether the claimant has been overpaid regular benefits.
Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation.
Whether the employer's account may be charged for benefits for the period of April 19, 2020 through August 1, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Janell Barton is employed by WesleyLife as a full-time Resident Assistant. The employer is a long-term care facility. Ms. Barton has been with the employer since 2018. She usually works dayshift hours and averages about 40 hours per week. Her wage is \$11.42 per hour. As of the July 31, 2020 appeal hearing date, Ms. Barton has last performed work for the employer on May 1, 2020.

Ms. Barton worked 35 hours during the week that ended April 25, 2020, for which the employer paid her \$399.70. Ms. Barton's work hour were reduced that week because Ms. Barton took some time off.

Ms. Barton worked 35 hours during the week that ended May 2, 2020, for which the employer paid her \$399.70. Ms. Barton's work hour were reduced that week because Ms. Barton took some time off.

Ms. Barton commenced an approved leave of absence on May 1, 2020. After Ms. Barton worked her shift that day, she spoke with Jamie Banks Westfield, Director of People and Culture (human resources manager), and requested a leave of absence. Ms. Barton told the employer that she was nervous about the novel coronavirus. Ms. Barton told the employer that she was at high risk in connection with COVID-19. Ms. Barton also expressed a need to care for her ill father. The employer approved the leave request. The employer subsequently paid sick time benefits to Ms. Barton, but does not know the amount or when they were paid. The employer at all relevant times continued to have full-time work available for Ms. Barton. Toward the end of July 2020, Ms. Barton contacted the employer to indicate that she had been released to return to the employment effective August 4, 2020. Ms. Barton told the employer that she would bring a medical release.

Ms. Barton established an original claim for benefits that was effective April 12, 2020. The effective date of the claim was about three weeks before Ms. Barton commenced her leave of absence. Iowa Workforce Development set Ms. Barton's weekly benefit amount at \$291.00. WesleyLife is the sole base period employer.

For the week that ended April 25, 2020, Ms. Barton reported \$540.00 in wages and received no unemployment insurance benefits. The amount Ms. Barton reported as wages was substantially more than the \$399.70 she would have earned, based on the employer's assertion that she only worked 35 hours that week. Either amount of weekly wages would have exceeded Ms. Barton's weekly benefit amount by more than \$15.00.

For the week that ended May 2, 2020, Ms. Barton reported \$240.00 in wages and received \$123.00 in regular benefits. However, based on the employer's statement that Ms. Barton worked 35 hours during the week that ended May 2, Ms. Barton's weekly wages would have been \$399.70, not \$240.00, and would have exceeded her weekly benefit amount by more than \$15.00.

For the week that ended May 9, 2020, Ms. Barton reported \$170.00 in wages and received \$193.00 in regular benefits. However, based on the employer's statement that Ms. Barton earned no wages for that week, but may have received some sick pay, it is unclear what the correct amount of wages was for that week.

For the week that ended May 16, 2020, Ms. Barton reported \$200.00 in wages and received \$163.00 in regular benefits. However, based on the employer's statement that Ms. Barton earned no wages for that week, but may have received some sick pay, it is unclear what the correct amount of wages was for that week.

For each of the 10 weeks between May 17, 2020 and July 25, 2020, Ms. Barton reported zero wages and received \$291.00 in regular benefits.

The regular benefits paid for the 13 weeks between April 26, 2020 and July 25, 2020 totaled \$3,389.00.

Iowa Workforce Development also paid Ms. Barton \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the 13 weeks between April 26, 2020 and July 25, 2020. The FPUC benefits totaled \$7,800.00.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.22(2) provides, in relevant part, as follows:

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.

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.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular hours and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

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 Code Section 96.19(38)(c).

If the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code Section 96.7(2)(a)(2)(a).

Ms. Barton did not participate in the appeal hearing and did not present any evidence to rebut the employer's testimony or to meet her burden of proving that she was able to work and available for work within the meaning of the law during the period that began April 19, 2020. Nor did Ms. Barton present any evidence to prove that she was temporarily and/or partially unemployed at any point during the period that began April 19, 2020. The evidence in the record establishes that the employer had full-time employment available to Ms. Barton for each of the weeks between April 19, 2020 and August 1, 2020. The evidence in the record indicates that for the weeks that ended April 26 and May 2, 2020, Ms. Barton worked nearly full-time hours and earned wages that exceeded her weekly benefit amount by more than \$15.00. That being the case, Ms. Barton cannot be deemed unemployed during those weeks, does not meet the "availability" requirement those weeks, and cannot be deemed partially unemployed during those weeks. At no time was Ms. Barton laid off. The evidence indicates that Ms. Barton was on an approved leave of absence during the period of May 1, 2020 through the benefit week that ended August 1, 2020. The leave was based on Ms. Barton's assertion that she was at high risk in connection with COVID 19. Because Ms. Barton has not demonstrated that she was available for work during the period beginning April 19, 2020, even under the United States Department of Labor's guidance to flexibly interpret this requirement, she is not eligible for benefits for the period beginning April 19, 2020. See Unemployment Insurance Program Letter No. 10-20. Regular, state-funded unemployment insurance benefits are denied for the period beginning April 19, 2020. The availability disqualification continued as of the July 31, 2020 appeal hearing date. The employer's account shall not be charged for benefits for the period of April 19, 2020 through August 1 2020.

Even though Ms. Barton 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.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Iowa Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because this decision denies regular benefits for the period beginning April 19, 2020, the \$3,389.00 in regular benefits that Ms. Barton received for the period of April 26, 2020 through July 25, 2020 is an overpayment of benefits that Ms. Barton must repay.

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").

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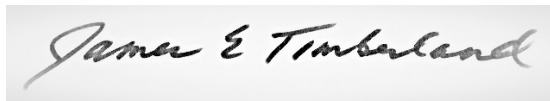
(f) Fraud and Overpayments

(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...

Because this decision denies regular benefits for the period of April 19, 2020 through August 1, 2020, Ms. Barton is also ineligible for Federal Pandemic Unemployment Compensation (FPUC) benefits for that same period. The \$7,800.00 in FPUC benefits that Ms. Barton received for 13 weeks between April 26, 2020 and July 25, 2020 is an overpayment of benefits that Ms. Barton must repay.

DECISION:

The June 15, 2020, reference 01, decision is reversed. The claimant was not available for work within the meaning of Iowa Code section 96.4(3) during the period of April 19, 2020 through the benefit week that ended August 1, 2020 and is not eligible for benefits for that period. The employer's account will not be charged for benefits paid to the claimant for that period. The claimant is overpaid \$3,389.00 in regular benefits for the period of April 26, 2020 through July 25, 2020. The claimant is overpaid \$7,800.00 in FPUC benefits for the period of April 26, 2020 through July 25, 2020. The claimant must repay the overpaid regular and FPUC benefits.



James E. Timberland
Administrative Law Judge

September 15, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**