

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNETTE M HAFFAR
Claimant

**WEST DES MOINES COMMUNITY
SCHOOL DISTRICT**
Employer

APPEAL 20A-UI-04668-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (2)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

West Des Moines Community School (employer) appealed a representative's May 22, 2020, decision (reference 01) that concluded Annette Haffar (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 June 11, 2020. The claimant participated personally. The employer participated by Sandy Donielson, Human Resources Secretary. The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

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 claimant was hired on August 20, 2007, as a full-time hourly teacher assistant program level one. The claimant had never been paid by the employer while she was on spring break or after the school year was over. She always had a job the following year.

The employer was on spring break for the week ending March 21, 2020. The claimant was not paid wages for this week because she did not work any hours. She filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$276.00. The claimant filed a weekly claim and received benefits of \$276.00 for the week ending March 21, 2020.

On or about March 23, 2020, the employer sent employees an email stating school would not start again. It would pay employees their normal wages until the end of the school year had school been in session. The employer paid the claimant the hourly rate she would have

received had school been in session from March 22, 2020, through May 20, 2020. The claimant filed a weekly claim on March 24, 2020, at 9:56 a.m. and received benefits of \$276.00 for the week ending March 21, 2020.

On May 31, 2020, when school was out, the claimant filed an additional claim for benefits. She filed her second weekly claim and received benefits of \$276.00 for the week ending June 6, 2020. This is a total of \$552.00 in state unemployment insurance benefits. She also received \$600.00 in Federal Pandemic Unemployment Compensation for the week ending June 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits because she is not able and available for work.

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 Code section 96.4(5)a and b provide:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a

government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

The claimant is employed by an educational institution. She worked for the 2019-2020 school year and plans to work for the 2020-2021 school year. There is some uncertainty about how the next year will proceed but it will proceed. The claimant was paid wages before spring break and she was paid wages after spring break. She filed for unemployment insurance benefits between successive terms/years with an educational institution when she had a reasonable assurance of employment. The claimant was employed in her regular manner.

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 \$552.00 in unemployment insurance benefits. This was during the period of time the claimant has been determined to be ineligible to receive benefits. The claimant was overpaid unemployment insurance benefits pursuant to Iowa Code section 96.3-7 for that period.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she is overpaid those benefits.

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. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits, the claimant received an additional \$600.00 in Federal Pandemic Unemployment Compensation for the week ending June 6, 2020. The claimant is required to repay those benefits as well.

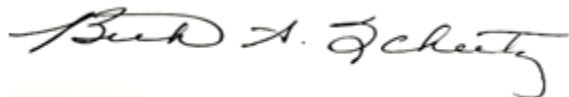
The claimant has the burden of proof in establishing her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant is not unemployed and, therefore, not able and available for work. There was no difference from the spring break and end of year of 2020 and all the other years before with respect to the claimant's pay. In 2020, the claimant believed the employer should have provided her work and pay for the week of spring break and the week after the school year ended. She filed for unemployment insurance benefits to receive remuneration for those weeks when the claimant had no expectation of pay.

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>.

DECISION:

The representative's May 22, 2020, decision (reference 01) is reversed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits as of March 15, 2020.

The claimant is overpaid unemployment insurance benefits of \$552.00. The claimant is overpaid Federal Pandemic Unemployment Compensation of \$600.00



Beth A. Scheetz
Administrative Law Judge

June 26, 2020
Decision Dated and Mailed

bas/sam