

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACY L TWEDT

Claimant

APPEAL 20A-UI-08882-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLUE STONE THERAPY INC

Employer

OC: 03/29/20

Claimant: Appellant (4-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability
Iowa Code § 96.3(7) – Overpayment of Benefits
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On July 31, 2020, Stacy L. Twedt (claimant) filed an appeal from the July 17, 2020, reference 02, unemployment insurance decision that denied benefits effective March 29, 2020, based upon the determination she was still employed in her on-call work. After due notice was issued, a telephone hearing was held on September 11, 2020. The claimant participated. The employer participated through Sarah Truby, HR Assistant. The department's Exhibits D1 and D2 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories. The parties agreed to waive notice on the issue of whether the claimant is eligible for Federal Pandemic Unemployment Compensation (FPUC) under Public Law 116-136 § 2104(b).

ISSUES:

Is the claimant's appeal timely?

Is the claimant totally, partially, or temporarily unemployed?

Was the claimant able to and available for work effective March 29, 2020?

Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?

Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer, who was doing business under the name Premier Health Services, on August 29, 2019, as an on-call Occupational Therapy Assistant. On

January 1, 2020, the employer changed its name to Blue Stone Therapy, Inc., but the claimant's employment remained the same.

The claimant filed her claim for benefits effective March 29, and the base period includes wage credits earned between October 1, 2018 and September 30, 2019. During that time, the claimant worked for her full-time employer, Aegis Therapies. The claimant left employment with Aegis and began working for Key Rehabilitation in November 2019, as a full-time Occupational Therapy Assistant. The claimant's weekly benefit amount is \$500.

The claimant has filed a weekly claim for benefits each week from March 29 through September 5, 2020. She has reported the following wages each week and received the following amount of regular and federal benefits:

Week Ending	Wages Reported	Regular benefits	FPUC
04/04/20	\$756	0	0
04/11/20	\$999	0	0
04/18/20	0	\$500	\$600
04/25/20	0	\$500	\$600
05/02/20	0	\$500	\$600
05/09/20	0	\$500	\$600
05/16/20	0	\$500	\$600
05/23/20	0	\$500	\$600
05/30/20	0	\$500	\$600
06/06/20	0	\$500	\$600
06/13/20	0	\$500	\$600
06/20/20	\$715	0	0
06/27/20	\$800	0	0
07/04/20	\$800	0	0
07/11/20	\$740	0	0
07/25/20	0	0	0
08/01/20	\$402	0	0
08/08/20	\$437	0	0
08/15/20	\$540	0	0
08/22/20	\$659	0	0
08/29/20	\$580	0	0
09/05/20	\$680	0	0

The claimant did not work from March 29 through June 13 because she is the sole care provider for her daughter whose school and daycare had closed. The claimant returned to work effective June 14, and her hours with Key Rehabilitation have been reduced due to the COVID-19 pandemic. The claimant has some weeks in which she has reported less than \$515 in gross wages. Whether the claimant has properly reported wages for the week ending July 25 needs to be reviewed by the Benefits or Integrity Bureau.

The unemployment insurance decision denying benefits was mailed to the claimant's address of record on July 17. The claimant did not receive the decision. The first notice of disqualification was on July 31, when she called IWD because she did not receive benefits that week. The appeal was filed immediately after that communication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is timely, but she was totally unemployed and not able to and available for work from March 29 through June 13. Regular unemployment insurance benefits are denied, and the claimant has been overpaid benefits. The claimant is eligible for partial benefits effective June 14 during any week in which she earns gross wages less than her weekly benefit amount plus fifteen dollars. As this employer is still employing the claimant at the same wages and hours contemplated at hire, this employer's account shall not be subject to charge.

I. Is the claimant's appeal timely?

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

II. Is the claimant totally, partially, or temporarily unemployed?

Iowa Code section 96.19(38) provides:

Definitions.

38. 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.

Under Iowa Employment Security Law, an individual is eligible for benefits if they are "unemployed through no fault of their own." Iowa Code § 96.2. The law goes on to define unemployment as total, partial, or temporary. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* In this case, the claimant did not work or earn wages between March 29 and June 13. As a result, she will only be eligible for benefits if she is able to and available for work.

The next issue is whether she was partially unemployed effective June 14. In order to be partially unemployed, an individual must be laid off from regular full-time employment or working less than his or her regular full-time work week and earn less in wages than their weekly benefit amount plus fifteen. *Id.* The claimant is partially unemployed effective June 14 during any week in which she earns less than \$515. Benefits are allowed.

Whether the claimant properly reported wages earned during the week ending July 25 is remanded to the Benefits or Integrity Bureau for review.

III. Was the claimant able to and available for work effective March 29, 2020?

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:

Benefit 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

...

(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

...

(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.

An individual claiming benefits has the burden to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. In this case, the claimant cannot be disqualified from receiving benefits based on being an on-call worker. The claimant's base period consists of full-time, as well as on-call, wage credits and she does not limit herself to on-call work.

However, the claimant was not available for work from March 29 through June 13, as she did not have adequate child care. She cannot establish that she was genuinely attached to the labor market during that time. Accordingly, regular unemployment insurance benefits are denied.

IV. Has the claimant been overpaid regular unemployment benefits and FPUC?

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.

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(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...

Since the claimant is not eligible for regular unemployment benefits from March 29 through June 13, she was overpaid \$4,500 in regular unemployment benefits and \$5,600 in FPUC. The claimant will be required to repay the benefits received unless the decision is reversed following an appeal to the Employment Appeal Board or she is eligible for Pandemic Unemployment Assistance (PUA).

V. Is the employer's account subject to charge?

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

Employer contributions and reimbursements.

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides, in part:

Charging of benefits to employer accounts.

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

As the claimant was not able to and available for work from March 29 to June 13, the chargeability of the employer's account for those weeks is moot. However, the claimant is currently employed with this employer, her supplemental employment. The claimant is partially unemployed with her full-time employer effective June 14. As the current part-time or supplemental employer is offering the same wages and hours as in the base period and contemplated at hire, no benefit charges shall be made to its account for any benefits paid after June 14.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 17, 2020, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant was totally unemployed and not able to and available for work from

March 29 through June 13, 2020. Regular unemployment insurance benefits are denied. As a result, she has been overpaid \$4,500 in regular unemployment benefits and \$5,600 in FPUC. The employer's account shall not be charged for benefits paid to the claimant after June 14, as she is still employed in the same manner contemplated in her contract of hire.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits from March 29 to June 13 under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. 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 in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

REMAND:

Whether the claimant correctly reported wages earned during the week ending July 25 is remanded to the Benefits or Integrity Bureau for review.



Stephanie R. Callahan
Administrative Law Judge

September 16, 2020
Decision Dated and Mailed

src/sam

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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.