

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHARI L HAND

Claimant

APPEAL 20A-UI-04283-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST

Employer

OC: 03/22/20

Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The claimant/appellant, Shari L. Hand, filed an appeal from the May 13, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 4, 2020. The claimant participated personally. The employer participated through Rhonda Wagoner, Benefits Specialist.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?
Is the claimant overpaid 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: The claimant has been employed full-time with this employer since 1996. She is currently an elementary special needs associate, earning \$17.85 per hour, working 37.5 hours each week. She is paid over a 12 month period, but performs work August-June. The claimant has not

been working full-time since March 22, 2020 but continues to be paid at the same rate of pay each week, as though she was performing work.

The claimant established her claim for benefits with an effective date of March 22, 2020, in response to COVID-19, and losing her part-time employment with Cask and Cork, where she works as an independent contractor doing wine tastings at stores. She has been unable to work at her part-time employer since March 7, 2020.

She filed weekly continued claims between the weeks of March 22, 2020 and May 9, 2020. She did not report wages earned with Des Moines Independent Community School District each week. She received \$1,946.00 in regular unemployment insurance benefits through May 9, 2020 and also received \$3,600.00 in Federal Pandemic Unemployment Compensation through May 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

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(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. 871-24.23(23) provides:

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

(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.

Recognizing that the claim was filed in response to loss of part-time employment, based on the evidence presented, the claimant does not meet the definition of being unemployed, because she is still employed full-time for this employer and is being paid full-time wages (even if she does not perform work). Accordingly, she is not eligible for regular unemployment insurance benefits.

The claimant's unrecorded wages in conjunction with her weekly continued claims, are remanded to the Benefits Bureau for an adjustment on weekly reported wages.

As claimant has received benefits to which she was not entitled, 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 decision disqualifying the claimant has been affirmed, the claimant was overpaid \$1,946.00 in unemployment insurance benefits. Claimant is required to repay 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...

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, she also received an additional \$3,600.00 in FPUC benefits for the six- week period ending May 9, 2020. Claimant is required to repay those benefits.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, she may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"). The Pandemic Unemployment Assistance ("PUA") section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

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>.

DECISION:

The May 13, 2020 (reference 01) initial decision is affirmed. The claimant does not meet the eligibility requirements for unemployment insurance benefits effective March 22, 2020, because she is not unemployed. Benefits are denied.

The claimant has been overpaid \$1,946.00 in regular unemployment insurance benefits and \$3,600.00 in federal pandemic unemployment compensation (FPUC). These overpayments are subject to recovery.

REMAND: The claimant's unrecorded wages in conjunction with her weekly continued claims, are remanded to the Benefits Bureau for an adjustment on weekly reported wages.



Jennifer L. Beckman
Administrative Law Judge
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June 19, 2020
Decision Dated and Mailed

jlb/scn