

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA H KERSH
Claimant

PARCO LTD
Employer

APPEAL 20A-UI-06149-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On June 15, 2020, the employer filed an appeal from the June 12, 2020 (reference 01) unemployment insurance decision that allowed benefits to the claimant effective March 29, 2020. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2020. Claimant participated personally and was represented by attorney Teri Jo Schmitz. The employer, Parco Ltd, participated through witness Juliet Diaz. Claimant's Exhibits A through I were admitted. Employer's Exhibits 1 and 2 were admitted. This hearing was consolidated with Appeal 20A-UI-06418-DB-T. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?
Is the claimant overpaid benefits?
Is the claimant overpaid Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for this employer since March 13, 2019 as a part-time crew member at the employer's fast-food restaurant. The claimant typically worked more than 32 hours per week even though she was classified as a part-time worker. She is still employed by the employer to date. She earns \$8.25 per hour.

Claimant filed her original claim for unemployment insurance benefits effective March 22, 2020. Claimant's weekly-benefit amount is \$173.00. Claimant has underlying medical conditions that increase her risk for serious complications from the Coronavirus should she contract it.

Claimant reported earning gross wages of \$149.00 for the benefit week-ending April 4, 2020. Claimant was offered 31.5 hours of work that week but she called off work. Her calling off resulted in her earning less gross wages. Claimant reported earning gross wages of \$78.00 for the benefit week-ending April 11, 2020. Claimant was offered additional hours that week but she called off for her shift on April 9, 2020. Claimant requested and was granted a voluntary leave of absence from April 13, 2020 through June 3, 2020.

Claimant reported earning gross wages of \$270.00 for the benefit week-ending June 6, 2020. Claimant worked 27.71 hours from June 3, 2020, when she returned from her leave of absence, to June 6, 2020. Claimant reported earning gross wages of \$132.00 for the benefit week-ending June 13, 2020. Claimant did not show up for work on June 10, 2020 and called off of work for June 13, 2020 that week. Claimant reported earning gross wages of \$165.00 for the week-ending June 20, 2020. Claimant was off work several days that week due to a medical procedure that she had conducted. Claimant reported earning gross wages of \$119.00 for the benefit week-ending June 27, 2020. However, claimant worked 24.76 hours that week and did not show up for one of her shifts. Her gross wages for that week would have been \$204.27. Claimant reported earning gross wages of \$89.00 for the week-ending July 4, 2020; however, claimant missed her shifts on July 1, 2020 and July 2, 2020. Claimant reported earning gross wages of \$146.00 for the week-ending July 11, 2020; however, claimant missed her shift on July 8, 2020. The missed shifts were not the result of the employer sending her home.

Claimant's administrative records establish that she has received regular State of Iowa unemployment insurance benefits of \$205.00 for the weeks between March 29, 2020 and June 6, 2020. Claimant has also received \$1,200.00 in Federal Pandemic Unemployment Compensation benefits for the weeks ending April 4, 2020 and April 11, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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", subparagraph (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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

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.

Iowa Code § 96.7(2)a(2)a provides:

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.

(emphasis added).

In this case, each of the weeks that the claimant worked at least some hours she also called off work from her scheduled shifts. Her calling off work and not being able to or available to work her scheduled shifts resulted in her earning gross wages less than her weekly-benefit amount. When a claimant calls off and refuses to work her scheduled shifts, but work was available, she cannot be considered partially unemployed. The reduction in hours the claimant worked was not due to any reduction in hours initiated by the employer. Rather, the claimant chose to call off work (due to illness or other personal reasons) and that resulted in her earning less wages. As such, claimant's reduction in hours were due to her failure to be able to or available for work. Because the claimant has not established her ability to or availability for work, benefits are denied effective March 22, 2020. Because benefits are denied, the issues of overpayment must be addressed.

Iowa Code § 96.3(7)a 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 unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant received benefits but has been subsequently determined to be ineligible for those benefits. As such, the claimant is overpaid unemployment insurance benefits of \$205.00 from March 22, 2020 through April 11, 2020 and must repay the agency those benefits.

The next issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation benefits. The administrative law judge finds that she is and that those must be repaid to the agency.

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 State of Iowa unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular State of Iowa benefits claimant received, the claimant also received an additional \$1,200.00 in Federal Pandemic

Unemployment Compensation benefits from March 22, 2020 through April 11, 2020. Claimant is overpaid and required to repay those benefits as well.

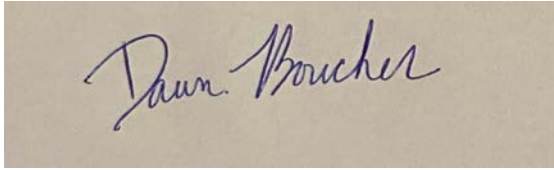
DECISION:

The June 12, 2020 (reference 01) decision is reversed. Claimant was not able to and available for full-time work. Unemployment insurance benefits funded by the State of Iowa are denied effective March 22, 2020. The claimant has been overpaid regular State of Iowa unemployment insurance benefits of \$205.00 for the weeks between March 29, 2020 and April 11, 2020 and is obligated to repay the agency those benefits. The claimant has also been overpaid Federal Pandemic Unemployment Compensation benefits in addition to regular unemployment insurance benefits. Claimant is overpaid \$1,200.00 in Federal Pandemic Unemployment Compensation benefits for the weeks between March 29, 2020 and April 11, 2020 and is obligated to repay the agency those benefits as well.

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.

A handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

July 23, 2020
Decision Dated and Mailed

db/scn