

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CAROL L SIMPSON**  
Claimant

**DM SERVICES INC**  
Employer

**APPEAL NO. 20A-UI-04711-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1/R)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – 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:**

Carol Simpson filed a timely appeal from the May 18, 2020, reference 01, decision that denied benefits effective March 29, 2020, based on the deputy's conclusion that Ms. Simpson was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 15, 2020. Ms. Simpson participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant has been able to work and available for work since March 29, 2020.  
Whether the claimant has been partially unemployed since March 29, 2020.  
Whether the claimant has been overpaid regular benefits.  
Whether the claimant has been overpaid FPUC benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Carol Simpson established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set Ms. Simpson's weekly benefit amount at \$203.00. Ms. Simpson is employed on a part-time basis with DM Services, Inc. as a credit specialist. DM Services is the sole base period employer in connection with Ms. Simpson's claim for benefits. Ms. Simpson has been with the employer since 2007. Ms. Simpson consistently works about 21.5 hours per week. Her hourly wage is \$12.64. There has been no decrease in the wages or in the amount of work that DM Services has for Ms. Simpson.

Outside the DM Services employment, Ms. Simpson operates a cleaning business as an owner-operator. Ms. Simpson derives about half of her annual income from the cleaning business and about half of her annual income from the DM Service employment. Ms. Simpson established

her claim for unemployment insurance benefits in response to a COVID-19 decrease in the demand for her cleaning services. At the time of the June 15, 2020 appeal hearing, Ms. Simpson had made weekly claims for nine consecutive weeks between March 29, 2020 and May 30, 2020. Ms. Simpson omitted her wages from DM Services when she made her weekly claims. Based on the \$12.64 wage and 21.5 hour workweek, the omitted DM Services wages were \$271.76 (rounded to \$272.00) per week. Based on Ms. Simpson's report of zero wages, Iowa Workforce Development paid Ms. Simpson \$203.00 in benefits for each of the weeks between March 29 and May 30, 2020. The regular benefits paid for that period totaled \$1,827.00. Based on the payment of regular benefits, Iowa Workforce Development also paid \$600.00 in Federal Pandemic Unemployment Compensation to Ms. Simpson for each of the weeks between March 29 and May 30, 2020. The FPUC benefits paid for that period totaled \$5,400.00.

### **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".

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 full-time week 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).

Workforce Development rule 871 IAC 24.23(26) provides as follows:

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

Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

Ms. Simpson did not meet the availability requirement, was not partially unemployed, and was not eligible for benefits for the nine weeks between March 29, 2020 and May 30, 2020. For each of those weeks, Ms. Simpson continued to enjoy the same wages and hours from the DM Services employment as existed during her base period. In addition, for each of those weeks, Ms. Simpson's wages from the employment exceeded her weekly benefit amount plus \$15.00. Ms. Simpson is not eligible for benefits for the period of March 29, 2020 through May 30, 2020. The employer's account will not be charged.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recovery 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 benefits for the period of March 29, 2020 through May 30, 2020, the \$1,827.00 in regular benefits that Ms. Simpson received for that period is an overpayment of benefits that Ms. Simpson 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”).

....

(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 the claimant is disqualified from receiving regular unemployment insurance (UI) benefits for the period of March 29, 2020 through May 30, 2020, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC) for that period. The \$5,400.00 in FPUC benefits the claimant received for the period of March 29, 2020 through May 30, 2020 constitutes an overpayment of benefits that the claimant must repay.

Based on the claimant’s continued weekly claims, this matter will be remanded to the Benefits Bureau for determination of whether the claimant has been able and available for work and/or partially unemployed during the period that began May 31, 2020.

**DECISION:**

The May 18, 2020, reference 01, decision is affirmed. The claimant did not meet the availability requirement and was not partially unemployed during the nine weeks between March 29, 2020 and May 30, 2020 and is not eligible for benefits for that those weeks. The employer’s account will not be charged. The claimant is overpaid \$1,827.00 in regular benefits for nine weeks between March 29, 2020 and May 30, 2020. The claimant is overpaid \$5,400.00 in FPUC benefits for nine weeks between March 29 2020 and May 30, 2020. The claimant must repay the overpaid regular and FPUC benefits.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able and available for work and/or partially unemployed during the period that began May 31, 2020.



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James E. Timberland  
Administrative Law Judge

July 13, 2020  
Decision Dated and Mailed

jet/scn