

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ALENA L ROBERTS**

Claimant

**APPEAL NO. 20A-UI-07735-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**

Employer

**OC: 04/19/20**

**Claimant: Respondent (4/R)**

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.19(38) – Temporary and 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:**

The employer filed a timely appeal from the July 1, 2020, reference 01, decision that allowed benefits effective April 19, 2020, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work, available for work, but that the employer was not providing the same work as existed during the base period. After due notice was issued, a hearing was held on August 13, 2020. Claimant Alena Roberts did not provide a telephone number for the hearing and did not participate. Monica Dyar, Human Resources Supervisor, represented the employer. Exhibits 1 through 9 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 was able to work and available for work for the period beginning April 19, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning April 19, 2020.

Whether the claimant was overpaid regular benefits for the period beginning April 19, 2020.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) for the period beginning April 19, 2020.

Whether the employer's account May be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Alena Roberts established an original claim for benefits that was effective April 19, 2020. Iowa Workforce Development set her weekly benefit amount for regular state benefits at \$253.00. Ms. Roberts' base period for purposes of the claim that was effective April 19, 2020 consists of the four calendar quarters of 2019. West Liberty Foods, L.L.C., is a base period employer in

connection with the claim. Ms. Roberts began her employment at West Liberty Foods in October 2019 and last performed work for the employer on May 18, 2020. Ms. Roberts was employed as a full-time Quality Assurance Technician. Ms. Roberts' usual work hours were 3:00 a.m. to 11:30 a.m., Monday through Friday. Through May 31, 2020, Ms. Roberts' hourly wage was \$14.80. Effective June 1, 2020, Ms. Roberts' hourly wage became \$15.52.

Due to a COVID-19 related reduction in customer orders, the employer reduced the hours of work the employer had available to Ms. Roberts effective April 19, 2020.

During the week that ended April 25, 2020, the employer provided 23.8 hours of work, for which Ms. Roberts earned \$352.24. Ms. Roberts under-reported her wages for that week as \$290.00 when she made her weekly claim to Iowa Workforce Development.

For the week that ended May 2, 2020, the employer provided 23.53 hours of work, for which Ms. Roberts earned \$348.24. Ms. Roberts under-reported her wages for that week as \$240.00 when she made her weekly claim to Iowa Workforce Development.

During the week that ended May 9, 2020, the employer provided 23.26 hours of work, for which Ms. Roberts earned \$344.24. Ms. Roberts under-reported her wages for that week as \$168.00 when she made her weekly claim to Iowa Workforce Development.

For the week that ended May 16, 2020, the employer had 25.19 hours of work for Ms. Roberts, but Ms. Roberts only worked 13.19 hours, for which she earned \$195.21. Ms. Roberts under-reported her wages for that week as \$84.00, when she made her weekly claim to Iowa Workforce Development. Ms. Roberts called in absences on May 11, 12, 13, 2020. Through the absences, Ms. Roberts missed out on 12 hours of work, for which she would have earned an additional \$177.60. The employer was not tracking the basis for absences at that time and had paused enforcement of its attendance policy.

During the week of May 17-23, 2020, the employer once again had full-time work available for Ms. Roberts. The employer had at that point returned to full production, seven days per week. On Monday, May 18, Ms. Roberts worked 8.2 hours, for which she earned \$121.36. Ms. Roberts was absent for the remainder of the week. Ms. Roberts reported to the employer that she was sick with COVID-19 and that she was being tested for COVID-19. Ms. Roberts provided the employer a medical note that stated she had symptoms consistent with COVID-19. The employer elected to pay Ms. Roberts full-time regular wages while Ms. Roberts waited for her COVID-19 test results. The employer paid Ms. Roberts \$594.96 for the week that ended May 23, 2020. Ms. Roberts did not report any of these wages to Iowa Workforce Development when she made her weekly claim for the week that ended May 23, 2020.

Ms. Roberts remained off work during the week of May 24-30, 2020. On May 22, 2020, the employer learned that Ms. Roberts had tested negative for COVID-19. However, Ms. Roberts' doctor kept her off work. Ms. Roberts provided a medical note that indicated she needed to remain off work until she was fever-free. Though Ms. Roberts performed no work for the employer that week, the employer paid her for the equivalent of 20 hours of work, \$296.00, the week that ended May 30, 2020. Ms. Roberts did not report any of these wages to Iowa Workforce Development when she made her weekly claim for the week that ended May 30, 2020.

On Friday, May 29, 2020, Ms. Roberts notified the employer that she was fever-free and could return to work on Monday, June 1, 2020. However, Ms. Roberts did not return to work on June 1, 2020. Instead, Ms. Roberts provided the employer with another medical note that said

she was ill and needed to remain off work until June 14, 2020 and until she had been “symptom free” for 72 hours. The note Ms. Roberts provided did not state the nature of her purported illness. The employer made several unsuccessful attempts to reach Ms. Roberts by telephone to discuss Ms. Roberts’ continued need to be off work. The employer left voicemail messages for Ms. Roberts and sent email messages to Ms. Roberts, but Ms. Roberts did not respond. Because Ms. Roberts’ absence during the week that ended June 6, 2020 did not appear to be COVID-19 related, and because the employer had full-time work available for Ms. Roberts that week, the employer did not pay any wages to Ms. Roberts for the week that ended June 6, 2020.

Despite Ms. Roberts’ assertion of a need to be absent due to purported illness through June 14, 202, the employer learned that Ms. Roberts was in fact out in the community participating in civil protest gatherings during the week that ended June 6, 2020. On or about June 8, 2020, one of Ms. Roberts’ coworkers provided the employer materials Ms. Roberts had posted on Facebook that reflected Ms. Roberts’ participation in the civil protests. These materials included a photocopy of a June 2, 2020 Facebook comment Ms. Roberts (nee Baker) had posted in which she stated she would be attending a protest in Burlington. The materials the employer received also included a Facebook post Ms. Roberts made on the morning of June 5, 2020 in which she offered to pick up other protesters on her way to a protest scheduled to occur at Ottumwa Central Park from 3:30 p.m. to 6:00 p.m. that afternoon. The coworker also provided the employer with a photograph showing Ms. Roberts at the June 5 protest, appearing well.

Ms. Roberts continued to be absent due to purported illness through the week that ended June 13, 2020. Ms. Roberts reported her need to be absent that week, relying on the medical note that indicated she needed to be off work through June 14, 2020.

On June 15, 2020, the employer notified Ms. Roberts by telephone that the employer was ending her employment based on the information the employer received that indicated Ms. Roberts had been participating in civil protest gatherings during the time she had indicated a need to be absent due to illness.

Ms. Roberts has made consecutive weekly claims since she established the claim for benefits that was effective April 19, 2020. By the time of the August 13, 2020 appeal hearing, Ms. Roberts had made weekly claims for each of the weeks between April 19, 2020 and August 8, 2020. Ms. Roberts reported wages and received regular benefits for the period of April 19, 2020 through June 20, 2020 as follows:

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>Benefits Paid</u>	<u>Actual Wages</u>
4/25/20	290.00.	0.00	352.24
05/02/20	240.00	76.00	348.24
05/09/20	168.00	148.00	344.24
05/16/20	84.00	232.00	195.21
05/23/20	0.00	253.00	0.0
05/30/20	0.00	253.00	0.0
06/06/20	0.00	253.00	0.0
06/13/20	0.00	253.00	0.0
06/20/20	0.00	253.00	0.0

Ms. Roberts continued to report zero wages through the benefit week that ended August 8, 2020. Iowa Workforce Development paid regular benefits for each of the 15 weeks between April 26, 2020 and August 8, 2020. Those regular benefits totaled \$3,492.00. Iowa Workforce Development paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC)

benefits for each of the 13 weeks between April 26, 2020 and July 25, 2020. The FPUC benefits totaled \$7,800.00.

### **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".

Iowa Admin. Code r. 871-24.22(1)(a) provides:

Benefits 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides, in pertinent part, as follows:

Benefits 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.

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

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to 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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

Ms. Roberts did not participate in the appeal hearing and did not present any evidence to meet her burden of proving that she was able to work and available for work during the period of April 19, 2020 through August 8, 2020, the period under review in connection with the appeal hearing.

During the weeks that ended April 25, May 2, and May 9, 2020, the employer only had reduced work hours available for Ms. Roberts, but Ms. Roberts earned wages that exceeded her \$253.00 weekly benefit amount by more than \$15.00. During each of these weeks, Ms. Roberts

was available for work for at least the majority of the week and thereby met the availability requirement. Based on the wages earned, Ms. Roberts cannot be deemed partially unemployed within the meaning of the law for the weeks that ended April 25, May 2, May 9, 2020 and is not eligible for benefits for those three weeks.

During the week that ended May 16, 2020, the employer had 25.19 hours of work for Ms. Roberts, which would have provided Ms. Roberts with \$372.81 in wages for the week if she had worked all the hours the employer had available. Ms. Roberts could not have been deemed partially unemployed during the week that ended May 16, 2020 if she had worked the hours the employer had available for her. But Ms. Roberts did not work all of the hours the employer had available. Instead, Ms. Roberts was absent from three out of five scheduled shifts and was not available for work for the majority of the week. Ms. Roberts did not meet the availability requirement during the week that ended May 16, 2020 and is not eligible for benefits for that week.

During the week that ended May 23, 2020, the employer had full-time work available for Ms. Roberts, but Ms. Roberts was only available for work one day, 8.2 hours. Ms. Roberts was absent due to purported illness for the remainder of the week. Ms. Roberts did not meet the availability requirement for the week that ended May 23, 2020 and is not eligible for benefits for that week. In any event, the employer paid Ms. Roberts full-time wages for that week, wages that exceeded her weekly unemployment insurance benefit amount by more than \$15.00. Ms. Roberts cannot be deemed partially unemployed during the week that ended May 23, 2020.

During the weeks that ended May 30, June 6, and June 12, 2020, the employer had full-time work available, but Ms. Roberts did not make herself available for work. Instead, Ms. Roberts reported a need to be absent for these entire weeks due to purported illness. Ms. Roberts did not meet the availability requirements during the weeks that ended May 30, June 6, and June 12, 2020.

Because the employer had full-time work available for Ms. Roberts during the period of May 17, 2020 through June 13, 2020, the employer's account may not be charged for benefits for those four weeks.

Ms. Roberts has presented no evidence to demonstrate that she was able to work and available for work during the period of June 13, 2020 through the benefit week that ended August 8, 2020. Accordingly, Ms. Roberts is not eligible for benefits for that period.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover 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 April 19, 2020 through August 8, 2020, the \$3,492.00 in regular benefits Ms. Roberts received for that period constitutes an overpayment of benefits that Ms. Roberts 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 this decision disqualifies Ms. Roberts for regular unemployment insurance (UI) benefits for the period of April 19, 2020 through August 8 2020, she is also disqualified for the \$7,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that she received for the 13 weeks between April 26, 2020 and July 25, 2020. Ms. Roberts must repay the overpaid FPUC benefits.

#### **DECISION:**

The July 1, 2020, reference 01, decision is modified in favor of the employer/appellant as follows.

During the weeks that ended April 25, May 2, and May 9, 2020, the claimant was able to work and available for work, but not partially unemployed within the meaning of the law. The claimant is not eligible for benefits for the weeks that ended April 25, May 2 and May 9, 2020.

During the week that ended May 16, 2020, the claimant was not able and available for work and was not partially unemployed within the meaning of the law. The claimant is not eligible for benefits for the week that ended May 16, 2020.

During the weeks that ended May 23, May 30, June 6, and June 12, 2020, the claimant was not able and available for work and not partially unemployed within the meaning of the law. The claimant is not eligible for benefits for the week that ended May 23, May 30, June 6, and June 12, 2020. The employer's account may not be charged for benefits for these four weeks when the employer had full-time work available to the claimant.

The claimant failed to demonstrate that she met the able and available requirements for the period of June 14, 2020 through August 8, 2020. Accordingly, the claimant is not eligible for benefits for that period.

The claimant is overpaid \$3,492.00 in regular, state benefits for the 15-week period of April 19, 2020 through August 8, 2020. The claimant must repay the overpaid benefits.

The claimant is overpaid \$7,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits 13 weeks between April 26, 2020 and July 25, 2020. The claimant must repay the overpaid benefits.

The administrative law judge notes that the administrative law judge locked the claim on August 13, 2020 and made the lock effective April 19, 2020. The administrative law judge notes that an Agency representative subsequently unlocked the claim, thereby allowing additional benefits to be paid to the claimant.

This matter is **remanded** to the Benefits Bureau for entry of an initial decision regarding the June 15, 2020 separation and for determination of whether the claimant has been able to work and available for work during the period beginning August 9, 2020.



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James E. Timberland  
Administrative Law Judge

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October 6, 2020  
Decision Dated and Mailed

jet/sam

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits 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 under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**