

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KELLY L MOSGOFIAN
Claimant

APPEAL NO. 20A-UI-04449-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACE INTERNATIONAL INC
Employer

OC: 03/29/20
Claimant: Respondent (2)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 20, 2020, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on June 9, 2020. Claimant participated personally. Employer participated by Terry Wolfgram. Employer's Exhibits 1-2 were admitted into evidence.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether claimant was overpaid benefits?

Whether claimant is eligible for FPUC benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The claimant currently works for Employer under the same terms and conditions as contemplated in the original contract of hire. Claimant requested and received time off from work from April 2 to April 15, as he had fears of contracting or having contracted the corona virus. Claimant stated that 'absolute anxiety and fear' caused him to request the time off and further stated that he was having panic attacks and was shaking at work prior to taking the time off. Claimant did not get tested for the virus and returned to work after April 15, 2020.

Claimant received state unemployment benefits of \$810.00 from the weeks ending April 4, 2020 to the week ending April 18, 2020.

Claimant received FPUC unemployment benefits of \$1800.00 from the weeks ending April 4, 2020 to the week ending April 18, 2020.

Employer did substantially participate in fact finding in this matter through employer's participation in the fact finding phone call and giving adequate information to find in the employer's favor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able and available for work for the time between April 2-15, 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".

Because the claimant requested time off while employer was still open and claimant's hours were still scheduled for him, claimant was not able and available for work from April 2, 2020 through April 15, 2020. Benefits are denied.

Claimant received state unemployment benefits of \$810.00 from the weeks ending April 4, 2020 to the week ending April 18, 2020. Said benefits are overpayments.

Claimant received FPUC unemployment benefits of \$1800.00 from the weeks ending April 4, 2020 to the week ending April 18, 2020. Said benefits are overpayments.

Employer did substantially participate in fact finding in this matter through employer's participation in the fact finding phone call and giving adequate information to find in the employer's favor.

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 due to disqualifying separations 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 20, 2020, reference 01, decision is reversed. The claimant is not eligible to receive unemployment benefits from the weeks ending 4-4-20 to the week ending 4-18-20, as the claimant was not able and available for work.

Claimant received state unemployment benefits of \$810.00 from the weeks ending April 4, 2020 to the week ending April 18, 2020. Said benefits are overpayments.

Claimant received FPUC unemployment benefits of \$1800.00 from the weeks ending April 4, 2020 to the week ending April 18, 2020. Said benefits are overpayments.

Employer did substantially participate in fact finding in this matter through employer's participation in the fact finding phone call and giving adequate information to find in the employer's favor. Employer's account will not be charged for overpayments received by claimant.



Blair A. Bennett
Administrative Law Judge

June 25, 2020
Decision Dated and Mailed

bab/sam