

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEISHLA M SANCHEZ
Claimant

ROSE ACRE FARMS
Employer

APPEAL 20A-UI-11958-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Respondent (4R)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the September 22, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 17, 2020, at 1:00 p.m. Claimant did not participate. Employer participated through Kathleen Baute, Director of Minority Relations. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.
Whether claimant was overpaid benefits.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with Rose Acre Farms on April 16, 2019. Claimant works approximately 40 hours per week as a laborer. Claimant works Monday through Friday from 6:00 a.m. until 3:00 – 4:00 p.m. and occasionally on Saturdays.

On July 12, 2020, claimant returned from a vacation in Puerto Rico. Employer required claimant to quarantine for two weeks per guidelines from the Centers for Disease Control and Prevention. Claimant returned to work on July 29, 2020 and worked her regular hours until August 17, 2020. From August 17, 2020 until August 30, 2020, claimant was on a leave of absence from work due to Covid-19. The leave of absence was initiated by claimant; it was not mandated by employer. Claimant returned to work on September 1, 2020 and worked her

regular hours until November 12, 2020. From November 12, 2020 until the time of the hearing, claimant was on a leave of absence from work due to Covid-19. The leave of absence was initiated by claimant; it was not mandated by employer. Claimant filed an initial claim for unemployment insurance benefits effective July 26, 2020. Claimant's weekly benefit amount is \$444.00.

The administrative record reflects that claimant filed for and has received regular unemployment insurance (UI) benefits in the gross amount of \$1,776.00 since filing her initial claim for benefits. For the benefit week ending August 1, 2020, claimant reported no earnings and received her full weekly benefit amount. In addition to regular unemployment insurance benefits, claimant also received Lost Wages Assistance (LWA).

REASONING AND CONCLUSIONS OF LAW:

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

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. R. 871-24.23(26) provides:

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

(26) 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(2)a(2) provides:

2. 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Between July 26, 2020 and August 1, 2020, claimant worked less than her full-time week. To the extent that claimant earned less than \$459.00 in gross wages that week, she may be considered partially unemployed and eligible for partial unemployment benefits. Claimant reported zero earnings for that week.

The issue of whether claimant properly reported her wages should be remanded for an investigation and decision.

From August 17, 2020 until August 30, 2020 and effective November 12, 2020, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, she is required to be able to and available for work. Claimant has the burden of proving that she was able to and available for work. Claimant has not met that burden. Therefore, claimant is not eligible for unemployment insurance benefits from August 17, 2020 until August 30, 2020 and effective November 12, 2020.

For all other times since claimant filed her initial claim for benefits, she has worked her regular full-time hours and received her regular wages. Therefore, claimant was not unemployed and is not eligible for benefits.

The issue of whether claimant is overpaid UI and LWA should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision in accordance with the findings of fact, reasoning and conclusions of law herein.

The issue of whether the employer will be charged for any regular, state-funded unemployment insurance benefits paid due to Covid-19 will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to Covid-19.

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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The September 22, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. If claimant's gross wages for the week ending August 1, 2020 were less than \$459.00, claimant was partially unemployed and is eligible for benefits for that week subject to reporting her wages and provided she is otherwise eligible; however, if claimant's gross wages for the week ending August 1, 2020 were greater than \$459.00, claimant was not partially unemployed and is not entitled to benefits. Claimant was totally unemployed from August 17, 2020 until August 30, 2020 and effective November 12, 2020; however, claimant was not able to and available for work. Accordingly, claimant is not entitled to benefits for that period. For all other weeks since July 26, 2020, claimant was not unemployed and is not entitled to benefits.

REMAND:

The issues of whether claimant accurately reported her wages for the week ending August 1, 2020 and whether claimant is overpaid unemployment insurance benefits and Lost Wages Assistance are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

The issue of whether employer should be charged for the unemployment insurance benefits paid to claimant due to Covid-19 is remanded to the Tax Bureau of Iowa Workforce Development for a determination.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

November 30, 2020
Decision Dated and Mailed

acw/mh