

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALAN R RUSSELL
Claimant

FEDERAL EXPRESS CORP
Employer

APPEAL 20A-UI-07193-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Sec 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On June 29, 2020, the employer filed an appeal from the June 19, 2020 (reference 01) unemployment insurance decision that allowed benefits to the claimant based on a short-term layoff. The parties were properly notified about the hearing. A telephone hearing was held on August 5, 2020. Claimant participated personally. The employer, Federal Express Corp., was represented by Charles Goldberg and participated through witness Andrew Sadler. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on an approved leave of absence?
Is the claimant overpaid benefits?
Is the claimant eligible for 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 employer since December 13, 2007. He works part-time as a material handler. He normally works Monday through Friday each week from either 5:00 a.m. or 5:30 a.m. until approximately 9:30 a.m. Andrew Sadler is his immediate supervisor. He is still employed to date.

Claimant's age and medical conditions place him at a greater risk of complications should he contract the Coronavirus. Claimant's wife, whom he resides with, also has medical conditions that place her at a greater risk of complication should she contract the Coronavirus.

Claimant's last day physically worked on the job was March 18, 2020. He was not laid off by the employer. From March 19, 2020 through April 17, 2020 claimant took a leave of absence from

work in which he exhausted his paid time off that he had accumulated. As of April 20, 2020, claimant continued to be on a leave of absence; however, it was unpaid until June 28, 2020. Starting June 29, 2020, claimant is still not working but had accumulated paid time off, which he is currently exhausting at this time. There has been work available to the claimant if he was able to and available for work.

Claimant's administrative records establish that he has received regular State of Iowa unemployment insurance benefits of \$1,890.00 from April 19, 2020 through June 27, 2020. Claimant has also received Federal Pandemic Unemployment Compensation of \$6,000.00 from April 19, 2020 through June 27, 2020. Claimant has not yet filed an application for Federal Pandemic Unemployment Assistance.

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", 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 Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

In this case, the claimant notified the employer that he could not work and he was granted a leave of absence. As such, the period of time he is not working is deemed to be a period of voluntary unemployment. Claimant is not working due to a layoff from the employer. Claimant is not working due to his own request for a leave of absence.

As such, claimant has not established that he is able to and available for work pursuant to Iowa Code § 96.4(3) during the weeks in which he has been totally unemployed. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits. Regular unemployment insurance benefits funded by the State of Iowa are denied effective April 19, 2020. The employer's account may not be charged for benefits paid.

Because benefits are denied, the issue of overpayment of regular State of Iowa unemployment insurance benefits and Federal Pandemic Unemployment Compensation that were issued based on his receipt of regular State of Iowa benefits 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.

As such, any overpayment of regular State of Iowa benefits must be repaid if the claimant is determined ineligible for benefits. The administrative law judge concludes that the claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa of \$1,890.00 for the weeks between April 19, 2020 and June 27, 2020 pursuant to Iowa Code § 96.3(7). Those benefits must be repaid to the agency.

The next issue is whether the claimant has also been overpaid Federal Pandemic Unemployment Compensation ("FPUC") benefits. The administrative law judge finds that he has been overpaid FPUC benefits. Those benefits 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 him from receiving FPUC benefits. In addition to the regular State of Iowa unemployment insurance benefits claimant received, he also received \$6,000.00 in FPUC benefits for the weeks between April 19, 2020 through June 27, 2020. Claimant is required to repay those benefits as well.

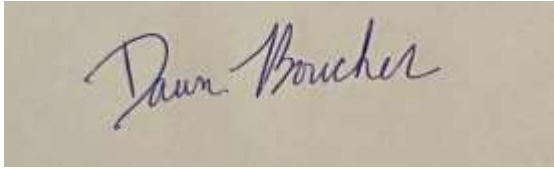
DECISION:

The June 19, 2020 (reference 01) unemployment insurance decision is reversed. The claimant is on a voluntary leave of absence and is not able to work and available for work effective April 19, 2020. Unemployment insurance benefits funded by the State of Iowa are denied until such time as the claimant is able to and available for work.

The claimant is overpaid regular State of Iowa unemployment insurance benefits of \$1,890.00 for the weeks between April 19, 2020 and June 27, 2020 and he must repay the agency those benefits. The employer's account shall not be charged for benefits paid.

The claimant is also overpaid \$6,000.00 in Federal Pandemic Unemployment Compensation benefits for the weeks between April 19, 2020 through June 27, 2020. Claimant is required to repay those benefits as well.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.



Dawn Boucher
Administrative Law Judge

August 13, 2020
Decision Dated and Mailed

db/sam

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.