

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AALIYAH G FOSTER**  
Claimant

**APPEAL 20A-UI-06502-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PARCO LTD**  
Employer

**OC: 04/12/20**  
**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On June 18, 2020, the employer filed an appeal from the June 9, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 23, 2020. Claimant did not register for the hearing and did not participate. Employer participated through human resource manager Juliet Diaz. Employer's Exhibit 1 was admitted into the record.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?  
Is the employer's account subject to charge?  
Was the claimant overpaid unemployment insurance benefits?  
Is the claimant eligible for Federal Pandemic Unemployment Assistance?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 13, 2020. Claimant works for employer as a part-time crew member.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. Prior to the pandemic, employer scheduled claimant to work 28 to 30 hours per week.

After the pandemic began, employer continued to schedule claimant for the same hours. Employer has scheduled claimant for hours every week since she filed the claim for

unemployment insurance benefits. Claimant began calling in for some of her shifts, presumably so she could collect the enhanced unemployment insurance benefits that are currently available.

In addition, it appears claimant did not accurately report the wages she did earn when filing her weekly continued claims.

Since filing this claim for unemployment insurance benefits, claimant has received regular, state-funded unemployment insurance benefits in the amount of \$1,171.00 for the 14 weeks ending July 18, 2020. Claimant has received Federal Pandemic Unemployment Compensation in the amount of \$8,400.00 for the 14 weeks ending July 18, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

Iowa Admin. Code r. 871-24.23(3) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

In this case, to the extent claimant is unemployed, it is only because she has placed restrictions on how much she is willing to work. Employer has work available for claimant. Claimant has not made herself fully available for work. Regular unemployment insurance benefits are denied effective April 12, 2020.

The next issue is whether claimant has been overpaid unemployment insurance benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

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.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$1,171.00 pursuant to Iowa Code § 96.3(7) as claimant was not eligible for benefits during the 14 weeks ending July 18, 2020.

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

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 unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, she also received an additional \$8,400.00 in FPUC benefits for the 14 week period ending July 18, 2020. Claimant is required to repay those benefits.

Furthermore, this case will be remanded to the Investigations and Recovery Unit of Iowa Workforce Development for an investigation and decision on whether an administrative penalty should be issued based on fraud.

**DECISION:**

The June 9, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is not able to and available for work effective April 12, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied. Claimant has been overpaid regular unemployment insurance benefits in the amount of \$1,171.00 and FPUC benefits in the amount of \$8,400.00. Claimant must repay these benefits.

**REMAND:**

The issue of whether an administrative penalty should be issued based on the issues delineated in the findings of fact above is remanded to the Investigations & Recovery Unit of Iowa Workforce Development for an investigation and decision.



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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

August 3, 2020  
Decision Dated and Mailed

cal/scn

**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 totally or partially 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 may be required to repay the benefits you've received so far.**