



On August 2, 2020, the Claimant gave birth by C-section and was hospitalized until August 4, 2020. She did not have childcare and is the primary caregiver for her infant. While under a doctor's care, she was released to return to work during the week ending September 19, 2020.

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

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) (2009) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

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 requirement 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 the benefits under section 96.5, subsection 1, paragraph "h".

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The record establishes that since March 29, 2020, the Claimant has performed no work and earned no wages. Therefore, the Claimant is considered totally unemployed. Because she was totally unemployed, she was required to be able and available for work. According to the Claimant's testimony, she was able and available to work at all times prior to the birth of her child. We agree. It was reasonable for the Claimant to believe she was on a leave of absence based on the Employer's directive. She was in constant contact with the Employer, but continually told to stay home. There is no evidence to support that the Claimant requested this leave, or that a doctor released her from work when the Employer sent her home March 16, 2020. For this reason, we cannot conclude the Claimant was not able and available from that time until August 2, 2020.

The facts support the Claimant was not able and available for work beginning August 2-4, 2020 and continued to be under a doctor's care during which time she was unable to secure childcare. The Claimant became able and available for work once she received her doctor's medical release on September 19, 2020.

**DECISION:**

The administrative law judge's decision dated September 30, 2020 is **REVERSED**. The Employment Appeal Board concludes the Claimant is allowed benefits from March 29, 2020 until August 2, 2020. She is denied benefits from August 2, 2020 until September 19, 2020. Thus, her regular state overpayment amount is reduced from \$5,400 to \$1,512 based on this decision.

In addition, we reverse the Administrative Law Judge's discussion of the recovery of overpaid FPUC benefits to be consistent with the following discussion:

The CARES Act provides:

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, **except** that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience

PL116-136, Sec. 2104(f)(2). In this case the Claimant was denied benefits and appealed. Despite being denied benefits the State of Iowa decided to release funds to the Claimant pending the outcome of her appeal. We note that Claimants are advised throughout the appeal process to continue to file weekly claims even if denied benefits. The Claimant here did so and was paid benefits until the Administrative Law Judge issued the appeal decision locking the claim. The Claimant was paid FPUC in addition to regular state benefits. We now consider whether the FPUC overpayment can be waived.

In deciding the question of fault, we will consider factors such as whether a material statement or representation was made by the Claimant in connection with the application for benefits, whether the Claimant knew or should have known that a fact was material and failed to disclose it, whether the Claimant should have known the Claimant was not eligible for benefits, and whether the overpayment was otherwise directly caused by the knowing actions of the Claimant. In deciding equity and good conscience we consider whether the overpayment was the result of a decision on appeal, and the financial hardship caused by a decision requiring overpayment. *Cf.* 871 IAC 24.50(7) (setting out factors for similar issue under TEUC from 2002). Applying these factors to the totality of the circumstances in this case including that the Claimant obviously did nothing to induce payment since benefits were *denied* from the beginning, we find on this individualized basis that the **FPUC overpayment of \$10,200.00** should be waived.

The Claimant should note well that the Claimant is still overpaid for the reduced overpayment amount of \$1,512 regular state benefits.

The Employer should note that the Employer will not be charged for any waived FPUC, and of course, will not be charged for regular benefits at this time.

**The overpayment of \$10,200.00 in FPUC benefits is hereby waived, and the Claimant has no obligation to pay back those benefits.**

The Employer will not be charged as FPUC is a federally funded benefit. In all other respects the decision of the Administrative Law Judge is reversed.

Lastly, we point out to the Claimant that although she is denied benefits for the previously outlined seven weeks under state unemployment law, **this does not bar her from receipt of certain special pandemic related benefits of which she may be allowed for the seven weeks (August 2nd through September 19, 2020) she was not able and available for work.** In fact, being ineligible from state unemployment benefits is a prerequisite to some of these benefits. Of particular interest to the Claimant is Pandemic Unemployment Assistance. That law provides benefits to persons who are unavailable for work due to certain pandemic related reasons may be able to collect PUA during any week this situation persists, going back to February 8, 2020 (for a maximum of 39 weeks). The federal Department of Labor has instructed that **eligible persons would include:**

An individual whose immune system is compromised by virtue of a serious health condition and is therefore advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by the coronavirus.

UIPL 16-20, Attachment 1, p. I-5

([https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_16-20\\_Attachment\\_1.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf)).

It is further our understanding that federal law requires all PUA claims to be backdated to as early as February 8, depending on when the applicant's self-quarantine began. Here, of course, the Claimant was at work as late as February 20. The upshot is that if she can make the necessary PUA showing of a need for self-quarantine she may very well be eligible for PUA for any week such a quarantine was or is in place, and so she is well-advised to pursue this avenue of federal benefits through Iowa Workforce. **Our ruling today is no bar to PUA.**

Should the Claimant wish to apply for PUA, and the information on how to do so is found at:

<https://www.iowaworkforcedevelopment.gov/pua-information>

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Ashley R. Koopmans

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