

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRYANT S SPIKER**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 20A-UI-04998-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Public Law 116-136, § 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On June 1, 2020, Bryant S. Spiker (claimant) filed an appeal from the May 28, 2020, reference 01, unemployment insurance decision that denied regular unemployment benefits based upon the determination he was not able to and available for work effective March 29, 2020. After due notice was issued, a telephone hearing was held on June 24, 2020. The claimant participated personally. He identified other witnesses but their testimony would have been duplicative so they were not called to testify. The employer did not respond to the hearing notice and did not participate. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record: specifically, the claimant's claim history.

**ISSUES:**

Is the claimant able to and available for work effective March 22, 2020?  
Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds the claimant's facts are uncontested. The claimant began working for the employer on or about June 6, 2016 as a full-time Assistant Food Service Leader. On or about March 26, 2020, the claimant requested a leave of absence because he and members of his immediate family are high risk for COVID-19 infection. The employer granted his request. The claimant remained in contact with his supervisor and returned to work on June 2.

The claimant filed his claim for regular unemployment benefits effective March 29. He received \$2,208.00 in regular unemployment benefits and \$4,800.00 in FPUC from March 29 through May 23.

**REASONING AND CONCLUSIONS OF LAW:**

- I. Is the claimant able to work, available for work, and actively and earnestly seeking work effective March 22, 2020?*

For the reasons that follow, the administrative law judge concludes that the claimant is not able to and available for work effective March 29 as defined by Iowa 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", 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. Code r. 871-24.22(2)(j) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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.

An individual claiming benefits has the burden of proof that they are able to and available for work. The claimant was not available for work effective March 29 through May 30 because he requested a leave of absence and was voluntarily unemployed. Accordingly, he was not eligible for regular unemployment insurance benefits.

As he was not eligible for regular unemployment benefits, the claimant may still be eligible for federal Pandemic Unemployment Assistance (PUA), which requires a claimant to be able to and available for work but for one of the COVID-19 reasons. Additional information about PUA is provided in the “note to claimant” on the last page of the decision.

*II. Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?*

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid regular unemployment benefits and FPUC.

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.

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(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...

Since the claimant is not eligible for regular unemployment benefits, he was overpaid \$2,208.00 in regular unemployment benefits and \$4,800.00 in FPUC from March 29 through May 23. The claimant will be required to repay the benefits received unless this decision is overturned or he is found eligible for PUA.

**DECISION:**

The May 28, 2020, reference 01, unemployment insurance decision is affirmed. The claimant is not able to and available for work effective March 22, 2020. Benefits are denied. As a result, the claimant has been overpaid \$2,208.00 in regular unemployment benefits and \$4,800.00 in FPUC.

*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>.



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Stephanie R. Callahan  
Administrative Law Judge

July 7, 2020  
Decision Dated and Mailed

src/scn