

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUDREY JO A STOCKFISH
Claimant

NPC INTERNATIONAL INC
Employer

APPEAL 20A-UI-04184-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Appellant (4)**

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Audrey Stockfish (claimant) appealed a representative's May 15, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of March 22, 2020, because a leave of absence was granted by her (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 3, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 14, 2020, as a part-time delivery driver. At the time she was hired, the claimant presented her social security card and driver's license. The two forms of identification had two different first names and the same last name. The claimant had legally changed her first name on May 3, 2019.

The claimant was scheduled for surgery on February 11, 2020, and the claimant needed to travel to the surgery site. The claimant and the employer agreed the claimant could take February 8, 2020, to approximately March 31, 2020. On February 6, 2020, the general manager told the claimant she could not return to work until she provided the employer with a social security card that bore her name.

In order to obtain a new social security card, the claimant had to obtain a new birth certificate. The claimant was born in California. On approximately February 18, 2020, the claimant started the process of getting an amended birth certificate in California. She was told the process

would take approximately six to eight weeks. The claimant thought she might have the birth certificate by April 1, 2020. The process has been delayed by the pandemic. The claimant has not received the paperwork from California. Without the amended birth certificate, she could not obtain an amended social security card.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. Her weekly benefit amount was determined to be \$235.00. On April 4, 2020, the claimant's doctor released her to return to work without restrictions. The claimant received \$235.00 in unemployment insurance benefits for the six-week period ending May 2, 2020. She received \$3,000.00 in federal pandemic unemployment compensation for the five-week period ending May 2, 2020.

The claimant remained in contact with the employer. The employer would not let the claimant return to work after her reassignment surgery with the same documentation she had at the time of hire on January 14, 2020. Finally, the employer agreed to rehire the claimant under the name on her social security card, not the claimant's legal name. The claimant was rehired and returned to work on May 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was not able and available from March 22, 2020 to April 4, 2020.

Iowa Admin. Code r. 871-24.23(1) and (10) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits from March 22, 2020, to April 4, 2020.

The second issue is whether the claimant was able and available from April 5, 2020, to May 2, 2020.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). During this period of time the claimant was able and available for work. She was waiting to be called back to work. The claimant's separation was due to an additional requirement placed on her by the employer that was not necessary at the time of her hire. The employer hired her with a discrepancy in her documentation. The only change was that she had surgery. The employer did not participate in the hearing to offer any evidence. The claimant was able and available for work from April 5, 2020, to May 2, 2020.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3(7)a-b, as amended in 2008, 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.

The claimant received \$470.00 in unemployment insurance benefits from March 22, 2020, to April 4, 2020. This was during the period of time the claimant has been determined to be ineligible to receive benefits. The claimant was overpaid unemployment insurance benefits pursuant to Iowa Code Section 96.3-7 for that period.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she is overpaid those benefits.

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

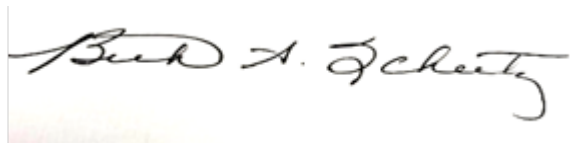
(2) Repayment.-- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

The claimant has been disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits, the claimant received an additional \$600.00 in Federal Pandemic Unemployment Compensation for the one-week ending April 4, 2020. The claimant is required to repay those benefits as well.

DECISION:

The representative's May 15, 2020, decision (reference 01) is modified in favor of the appellant. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from March 22, 2020, to April 4, 2020. She is able and available for work from April 5, 2020, through May 2, 2020.

The claimant is overpaid unemployment insurance benefits of \$470.00 for the two-week period ending April 4, 2020. The claimant is overpaid Federal Pandemic Unemployment Compensation of \$600.00 for the one-week period ending April 4, 2020.



Beth A. Scheetz
Administrative Law Judge

June 19, 2020
Decision Dated and Mailed

bas/scn