

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER K LODER
Claimant

APPEAL NO. 20A-UI-05224-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

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

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits.
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Jennifer Loder filed a timely appeal from the May 29, 2020, reference 03, decision that denied benefits effective March 29, 2020, based on the deputy's conclusion that Ms. Loder requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on July 7, 2020. Ms. Loder participated. Adam Blackburn represented the employer and presented additional testimony through Sharon Lovell. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and KPYX.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant was overpaid regular benefits.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Loder established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set her weekly benefit amount at \$129.00. By the time of the July 7, 2020 appeal hearing, Ms. Loder had weekly claims for the 14 consecutive weeks between March 29, 2020 and July 4, 2020. IWD paid \$974.00 in regular benefits to Ms. Loder for eight weeks between March 29, 2020 and May 23, 2020. IWD paid \$4,800.00 in Federal Pandemic Unemployment Compensation to Ms. Loder for those same eight weeks.

Ms. Loder was most recently employed by Dolgencorp, L.L.C., doing business as Dollar General, for whom Ms. Loder worked as a part-time cashier. Ms. Loder began the Dollar General employment in August 2019 and last performed work for the employer on or about March 30, 2020. Ms. Loder's wage at Dollar General was \$9.00 per hour. On April 1, 2020, Ms. Loder began an approved leave of absence. Ms. Loder did not provide an anticipated

return date when she requested to go off work. The employer's third-party leave administrator approved leave for the period of April 1, 2020 through June 30, 2020, but denied leave for the period beginning July 1, 2020. For four years, Ms. Loder has resided with her 86-year-old mother. Ms. Loder assists her mother with dressing, bathing, eating, cleaning and laundry. Ms. Loder's mother is able to get herself to and from the restroom, but is weak and has difficulty moving about. At her family's urging, Ms. Loder elected to go off work out of concern for her mother in the context of the COVID-19 pandemic. Ms. Loder was concerned about potential exposure to COVID-19 in the workplace and about communicating the virus to her elderly mother. Neither Ms. Loder nor her mother has been exposed to the novel coronavirus and neither has contracted COVID-19. The employer continued to have the same work available for Ms. Loder while Ms. Loder was on her leave of absence.

Before Ms. Loder went off work, the employer had taken steps to implement Center for Disease Control recommendations for preventing the spread of COVID-19. The employer placed marks on the floor to indicate the appropriate "social distance" that should be maintained in the Dollar General Store. The employer installed Plexiglas barriers at the registers. The employer provided gloves for employees to wear. The employer provided hand sanitizer for employees and customers to use. The employer does not know of any instances of COVID-19 exposures in the Cedar Falls Dollar General store where Ms. Loder worked.

On June 27, 2020, Ms. Loder contacted her supervisor and told the supervisor not to place her back on the schedule. Ms. Loder cited a rescheduled medical appointment for her mother as the basis for her request to not be placed on the work schedule. From that point, Ms. Loder and her supervisor had an understanding that Ms. Loder would contact the employer to let the employer know when she would be available to be placed on the work schedule.

Ms. Loder has had no other employment during the period in which she has been employed by Dollar General. As of July 7, 2020, Ms. Loder and Dollar General continued to deem Ms. Loder a current employee.

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", 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) 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.

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.

...

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In connection with the Covid-19 pandemic and passage of the Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Iowa Workforce Development published on its website a list of Covid-19-related scenarios under which a claimant would be eligible for unemployment insurance benefits, provided they met all other eligibility requirements. The scenarios create limited and temporary exceptions to the able and available requirements set forth at Iowa Code section 96.4(3). These scenarios include circumstances wherein the claimant is immune-compromised and has been advised to quarantine. The scenarios include circumstances wherein the claimant is caring for a family member who is ill with COVID-19. The scenarios also include circumstances wherein the claimant has been exposed to COVID-19 and must quarantine. The scenarios also include circumstances wherein the claimant is ill with COVID-19. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Ms. Loder has not been available for work since she established the claim for benefits that was effective March 29, 2020. For the period of April 1, 2020 through June 30, 2020, Ms. Loder was on an approved leave of absence. For the period beginning July 1, 2020, Ms. Loder was on an unapproved leave of absence. Ms. Loder's basis for being off work does not fall within any of the COVID-19 related exceptions to the able and available requirements. Neither Ms. Loder nor her mother has been exposed to or has been ill with COVID-19. Ms. Loder is not an immune-compromised person and was not advised by a health professional to quarantine. Ms. Loder is not eligible for unemployment insurance benefits for the period beginning March 29, 2020.

Benefits are denied effective March 29, 2020. The availability disqualification continued at the time of the July 7, 2020 appeal hearing.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits. Ms. Loder is overpaid \$974.00 in regular benefits for eight weeks between March 29, 2020 and May 23, 2020. Ms. Loder must repay the overpaid 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...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$4,800.00 in FPUC benefits the claimant received for eight weeks between March 29, 2020 and May 23, 2020 constitutes an overpayment of benefits. Claimant is required to repay those benefits.

DECISION:

The May 29, 2020, reference 03, decision is affirmed. The claimant has not been available for work since establishing the original claim that was effective March 29, 2020. Benefits are denied effective March 29, 2020. The availability disqualification continued as of the time of the July 7, 2020 appeal hearing. The claimant is overpaid \$974.00 in regular benefits for eight weeks between March 29, 2020 and May 23, 2020. The claimant is overpaid \$4,800.00 in FPUC benefits the claimant received for eight weeks between March 29, 2020 and May 23, 2020

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. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* 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>.



James E. Timberland
Administrative Law Judge

August 5, 2020
Decision Dated and Mailed

jet/sam