

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JARRETT T WEETER
Claimant

MC SOIFER'S INC
Employer

APPEAL 20A-UI-07926-JE-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/23/20
Claimant: Respondent (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 15, 2020 (reference 01) that determined the claimant was able and available for work. After due notice was issued, a hearing was held by telephone conference call on September 1, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Randy Betsinger, Director of Operations and Leah Crane, General Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUES:

The issues are whether the claimant is eligible for total or partial unemployment benefits, whether the claimant still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge, whether the claimant is overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

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 as a part-time shift manager for McSoifer's (McDonalds) on September 14, 2015. The claimant's hours with McDonald's actually increased after restaurants were forced to close their dining rooms March 17, 2020. The claimant had averaged at most 20-25 hours per week prior to that date. He averaged 30-40 hours after March 17, 2020, because his other employer, Texas Roadhouse, was closed. He never was on a leave of absence or reduced work week at McDonalds.

The claimant filed for unemployment insurance benefits with an effective date of February 23, 2020. His weekly benefit amount was determined to be \$251.00. The claimant has not received any benefits since filing his claim February 23, 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.

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).

In this case, the claimant was not totally or partially unemployed by McDonalds. He was not laid off, on a leave of absence or working a reduced workweek at McDonalds but is still employed at the same hours and wages as in his original contract of hire.

The employer had work available for the claimant and the claimant's hours actually increased after March 17, 2020. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits from this employer.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant does not have to be able and available for work to be eligible for the federal unemployment programs. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The claimant has been disqualified from receiving regular unemployment insurance benefits. However, he has not received any benefits to date and consequently there is no overpayment of benefits.

DECISION:

The July 15, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire. Regular unemployment insurance benefits funded by the state of Iowa are denied.



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

September 3, 2020
Decision Dated and Mailed

je/mh

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>.