

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANN M BLOOM**  
Claimant

**APPEAL 20A-UI-09884-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 12/23/18  
Claimant: Respondent (2R)**

Iowa Code § 96.19(38) – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

On August 12, 2020, Team Staffing Solutions (employer/appellant) filed an appeal from the August 6, 2020 (reference 02) unemployment insurance decision that determined Ann Bloom (claimant/respondent) was eligible for benefits beginning December 23, 2018, based on a finding claimant was able and available for work.

A telephone hearing was held on October 14, 2020. The parties were properly notified of the hearing. Employer participated by Risk Manager Sarah Fiedler. Claimant participated personally.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same wage and hours? Is the employer's account subject to charge?
- IV. Was the claimant overpaid benefits?
- V. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a part-time temporary worker. She was most recently assigned for work with a call center. Claimant's first day of employment was January 6, 2020. The last day claimant worked on the job was June 17, 2020.

Since beginning work for employer, claimant's availability has been restricted to part-time clerical work in the Cedar Rapids area, with flexible hours and the ability to work remotely. Due to claimant's age and health issues, she is largely incapable of performing physical labor.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$2,223.00 from the benefit week ending April 4, 2020 and continuing through the benefit week ending August 1, 2020.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$600.00 for a total of 14 weeks. The total amount of FPUC paid to date is \$8,400.00.

The administrative record shows the claim here was effective December 23, 2018. It was reopened with an effective date of March 29, 2020. Claimant also filed claims with effective dates of March 15, 2020 and June 21, 2020. She was found to be monetarily ineligible for those claims.

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

For the reasons set forth below, the August 6, 2020 (reference 02) unemployment insurance decision that determined claimant was eligible for benefits beginning December 23, 2018, based on a finding claimant was able and available for work is REVERSED and REMANDED. Benefits are denied from the benefit week ending January 11, 2020 and continuing to date.

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 Admin. Code r. 871-24.23(26) provides:

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

**(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 reduce workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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 in relevant part:

*m. Restrictions and reasonable expectation of securing employment.* An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

The administrative law judge finds claimant was not totally, partially, or temporarily unemployed from the benefit week ending January 11, 2020 and continuing through the benefit week ending June 20, 2020 and is therefore ineligible for benefits during that time. This is because claimant was still employed by employer in the same way as contemplated in the original contract of hire during this time. That is, claimant was offered part-time, temporary assignments and was free to accept or reject those during this time.

The administrative law judge finds claimant is not available for work and is therefore ineligible for benefits after the separation from employment, from the benefit week ending June 27, 2020 and continuing to present. This is because claimant has no reasonable expectation of securing employment given the restrictions she has placed on her availability for work. Claimant's availability is restricted to part-time clerical work in the Cedar Rapids area, with flexible hours and the ability to work remotely.

Iowa Code section 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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$2,223.00 from the benefit week ending April 4, 2020 and continuing through the benefit week ending August 1, 2020. Because the administrative law judge now finds claimant ineligible for benefits during that time, she has been overpaid in that amount. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

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 during the period in question, she is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$8,400.00. Claimant is required to repay that amount.

**DECISION:**

The August 6, 2020 (reference 02) unemployment insurance decision that determined claimant was eligible for benefits beginning December 23, 2018, based on a finding claimant was able and available for work is REVERSED and REMANDED. Benefits are denied from the benefit week ending January 11, 2020 and continuing to date.

The administrative law judge makes no finding as to claimant's ability to and availability for work from December 23, 2018 and continuing until claimant began work for employer during the benefit week ending January 11, 2020. Employer's account shall not be charged for any period of unemployment during that period.

Claimant has been overpaid benefits in the amount of \$2,223.00. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

Claimant has been overpaid FPUC in the amount of \$8,400.00. Claimant is required to repay that amount.

**REMAND:**

This matter is remanded to the Benefits Bureau for a determination of whether the December 23, 2018 claim was correctly reopened effective March 29, 2020, and whether claimant is monetarily eligible for benefits from that reopening date.



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

October 21, 2020  
Decision Dated and Mailed

abd/mh

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.