BETSY J RICHARDS
Claimant

THE EASTER SEAL SOCIETY OF IA INC
Employer

APPEAL 20A-UI-05730-AW-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/10/19
Claimant: Appellant (6)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 5, 2020 (reference 06) unemployment insurance decision that denied benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for July 10, 2020, at 2:00 p.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number at which appellant could be reached for the scheduled hearing and no hearing was held. Official notice was taken of the administrative record.

ISSUES:

Whether the appeal should be dismissed based on the appellant's failure to appear and participate.
Whether claimant has been overpaid benefits.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant failed to provide a telephone number at which appellant could be reached for the scheduled hearing and did not participate or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative.

The hearing notice instruction specifically advises parties of the date and time of hearing. It also states:

IMPORTANT NOTICE!
YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU
AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will
not call you for the hearing.

The back page of the hearing notice provides further instruction and warning:

Failure to Participate or Register for Appeal Hearing
If you do not participate in the hearing, the judge may dismiss the appeal or issue
a decision without considering your evidence. The Appeals Bureau does not
have a phone number for this hearing unless you provide it to us by following the
instructions on the other side of this page. If you do not follow those instructions,
the judge will not call you for the hearing. 871 IAC 26.14(7)

The information quoted above also appears on the hearing notice in Spanish.

As a courtesy to the appellant the record was left open for a minimum of 15 minutes after the
hearing start time to give the appellant a reasonable opportunity to participate. Holding the
appellant in default for failure to appear and participate during a 15-minute window after the
hearing start time is reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that claimant was not eligible for unemployment
insurance benefits.

The administrative record reflects that claimant filed for and has received regular unemployment
insurance (UI) benefits in the gross amount of $4,192.00 for the 11-week period between
March 15, 2020 and May 30, 2020. In addition to regular unemployment insurance benefits,
claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross
amount of $5,400.00 for the nine-week period between March 29, 2020 and May 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to
appear or participate in a hearing after proper service of notice, the judge may enter a default
decision or proceed with the hearing and make a decision in the absence of the party. The
statute further states that if a party makes a timely request to vacate the decision and shows
good cause for failing to appear, the judge shall vacate the decision and conduct another
hearing.

Iowa Admin. Code r. 871-26.14(7) provides, in pertinent part:

> (7) If a party has not responded to a notice of telephone hearing by providing the
> appeals bureau with the names and telephone numbers of the persons who are
> participating in the hearing by the scheduled starting time of the hearing or is not
> available at the telephone number provided, the presiding officer may proceed with the
> hearing. If the appealing party fails to provide a telephone number or is unavailable for
> the hearing, the presiding officer may decide the appealing party is in default and
> dismiss the appeal as provided in Iowa Code section 17A.12(3).
>
> a. If an absent party responds to the hearing notice while the hearing is in progress, the
> presiding officer shall pause to admit the party, summarize the hearing to that point,
> administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

If the appellant disagrees with this decision, the appellant may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

The next issue to be determined is whether claimant has been overpaid benefits. For the reasons that follow, the administrative law judge concludes claimant was overpaid benefits, which must be repaid.

Iowa Code section 96.3.(7) states:

> 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.

Benefits were paid to which claimant was not entitled. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of $4,192.00 for the 11-week period between March 15, 2020 and May 30, 2020. Claimant is required to repay 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…

Because claimant is disqualified from receiving UI, claimant is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of $5,400.00 for the nine-week period between March 29, 2020 and May 30, 2020. Claimant is required to repay those benefits.

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 due to disqualifying separations, 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.   If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The June 5, 2020 (reference 06) unemployment insurance decision denying benefits remains in effect, as the appellant is in default and the appeal is dismissed. Claimant has been overpaid regular unemployment insurance benefits in the gross amount of $4,192.00 for the 11-week period between March 15, 2020 and May 30, 2020, which must be repaid. Claimant has been overpaid Federal Pandemic Unemployment Compensation in the gross amount of $5,400.00 for the nine-week period between March 29, 2020 and May 30, 2020, which must be repaid. This overpayment decision is made concurrently and should be considered duplicative of the overpayment decision in Appeal 20A-UI-05731-AW-T.

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Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 21, 2020_____
Decision Dated and Mailed

acw/sam