

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CALEB D HOLMES
Claimant

**WATERLOO COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 20A-UI-06690-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Respondent (2)

Iowa Code § 96.19(38) – Total, partial unemployment

STATEMENT OF THE CASE:

On June 22, 2020, Waterloo Community School District (employer/appellant) filed a timely appeal from the June 17, 2020 (reference 01) unemployment insurance decision that allowed benefits.

A telephone hearing was held on July 28, 2020. The parties were properly notified of the hearing. Caleb Holmes (claimant/respondent) submitted a written statement in lieu of participation, which was admitted as Claimant's Exhibit 1. Employer participated by Employee Relations & Liability Specialist Korey Minard.

Employer's Exhibits 1 and 2 were 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 hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

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

Claimant began working for employer on October 19, 2017. Claimant is still employed by employer. Claimant is employed full-time as a behavior intervention specialist. The school closed mid-March and claimant transitioned to working from home at that time. Claimant continued work for employer until the term ended on June 3, 2020. Claimant was paid during this time. Claimant is also paid during the summer. It is anticipated claimant will return to work for employer at the beginning of the 2020-2021 school year.

Claimant filed for benefits from the benefit week ending May 9, 2020, and continuing through the benefit week ending June 13, 2020. Claimant has been paid regular, state benefits in the amount of \$442.00. His weekly benefit amount is \$221.00. He reported earning wages in the amount of \$425.00 from the benefit week ending May 23, 2020 and continuing through the benefit week ending June 13, 2020. He has been paid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$1,200.00.

Employer sent a letter in lieu of participation in the fact-finding interview. This letter contained essentially the same information as set forth above.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the June 17, 2020 (reference 01) unemployment insurance decision that allowed benefits is REVERSED.

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 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".

Claimant was not totally, partially, or temporarily unemployed during the period in question. Claimant was employed full-time for employer through the benefit week ending June 6, 2020.

After that, he reported wages greater than his weekly benefit amount plus \$15.00. Benefits are denied.

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.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

Claimant has been paid regular, state benefits in the amount of \$442.00. Because the administrative law judge now finds him ineligible for benefits, he has been overpaid in that amount. The administrative law judge finds employer did participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10. 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, he is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$1,200.00. Claimant is required to repay that amount.

DECISION:

The June 17, 2020 (reference 01) unemployment insurance decision that allowed benefits is REVERSED. Claimant was not unemployed during the period in question and as such is not eligible for benefits.

Claimant has been overpaid regular, state benefits in the amount of \$442.00. 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 \$1,200.00. Claimant is required to repay that amount.



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

August 4, 2020

Decision Dated and Mailed

abd/sam

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>.