

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUDREY D ROBBINS
Claimant

P J IOWA LC
Employer

APPEAL 20A-UI-03132-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (2/R)

Section 96.19-38-a & b – Total and Partial Unemployment
Iowa Code § 96.4-3 – Able and Available
Section 96.7-2-a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

P J Iowa (employer) appealed a representative's April 10, 2020, decision (reference 01) that concluded Audry Robbins (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2020. The claimant participated personally. The employer participated by J.P. Owen. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid unemployment insurance benefits, and which party should be held responsible for the overpayment.

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 on March 2, 2020, as a part-time insider at \$10.00 per hour. At the time she was hired she told the employer her availability. She could work 10:00 a.m. to 4:00 p.m. all days except Wednesdays and Sundays. The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$144.00. The employer is not a base period employer.

For the week ending March 21, 2020, the claimant reported earnings in the amount of \$120.00. The claimant received partial unemployment insurance benefits \$60.00 for that week. For the week ending March 28, the claimant reported earnings in the amount of \$110.00. She received partial unemployment insurance benefits \$70.00 for that week. The employer paid her \$270.00 for the two-week period ending April 12, 2020.

For the week ending April 4, 2020, the claimant reported earnings in the amount of \$80.00. The claimant received partial unemployment insurance benefits \$100.00 for that week and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC).

For the week ending April 11, 2020, the claimant reported earnings in the amount of \$40.00. The claimant received partial unemployment insurance benefits \$140.00 for that week and \$600.00 in FPUC. The employer paid her \$210.00 for the two-week period ending April 12, 2020.

For the week ending April 18, 2020, the claimant reported earnings in the amount of \$80.00. The claimant received partial unemployment insurance benefits \$100.00 for that week and \$600.00 in FPUC.

For the week ending April 25, 2020, the claimant reported earnings in the amount of \$200.00. The claimant received no unemployment insurance benefits for that week and no FPUC. The employer paid her \$230.00 for the two-week period ending April 26, 2020. For the eight week period ending April 26, 2020, the employer scheduled the claimant for an average of thirteen hours per week.

For the week ending May 2, 2020, the claimant reported earnings in the amount of \$100.00. The claimant received partial unemployment insurance benefits \$80.00 for that week and \$600.00 in FPUC.

This is a total of \$550.00 in state unemployment insurance benefits and \$2,400.00 in federal pandemic unemployment compensation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Iowa Admin. Code r. 871-24.22(2)f 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.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

The claimant argues that she is partially unemployed. For a worker to qualify under the statute, she must meet one of the qualifications. The claimant was not hired as a full-time employee and she has been working every week. That leaves one option. Under this option she must have contributions from other employers in her base period. The claimant has no other wages in her base period that are available for this purpose. The claimant is not partially unemployed. She is not eligible to receive unemployment insurance benefits.

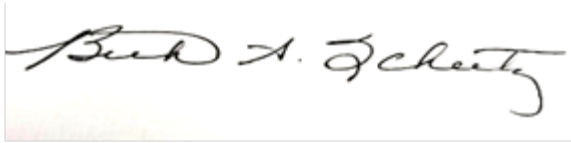
The issue of whether claimant has been overpaid unemployment insurance benefits and federal pandemic unemployment compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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>.

DECISION:

The representative's April 10, 2020, decision (reference 01) is reversed. The claimant is not partially unemployed and is not eligible to receive unemployment insurance benefits.

The issue of whether claimant has been overpaid federal pandemic unemployment compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

May 11, 2020
Decision Dated and Mailed

bas/scn