

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN M ITA
Claimant

WALMART INC.
Employer

APPEAL 20A-UI-05010-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On June 1, 2020, Dawn Ita (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated May 28, 2020 (reference 01) that denied benefits.

A telephone hearing was held on June 26, 2020 at 9 a.m. The parties were properly notified of the hearing. Claimant participated personally. Walmart Inc. (employer/respondent) did not register a number for the hearing and did not participate.

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?
- 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 began working for employer in July 2011. Claimant is still employed by employer. Claimant is employed full-time as an order filler. Claimant took a leave of absence starting March

29, 2020. This leave was directly related to the pandemic. Claimant remained in contact with employer during this time and filed for benefits as instructed. She returned to work May 2, 2020.

The unemployment insurance system shows claimant received weekly benefits in the amount of \$218.00 for the week ending April 4, 2020; \$518.00 for the weeks ending April 11, 18, and 25; and \$467.00 for the week ending May 2, 2020. The total amount of benefits paid to date is \$2,239.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of five weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 2, 2020. The total amount of FPUC benefits paid to date is \$3,000.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated May 28, 2020 (reference 01) that denied benefits is AFFIRMED.

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. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Because claimant was on a leave of absence during the period in question, she was not available for work during that time. As such, she was not eligible for benefits during that time.

The administrative law judge notes claimant's leave of absence was directly related to the pandemic. While this decision denies regular unemployment insurance benefits, claimant may well qualify for Pandemic Unemployment Assistance benefits. Claimant must apply to determine her eligibility. Further information on PUA is set forth below.

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 received weekly benefits in the amount of \$218.00 for the week ending April 4, 2020; \$518.00 for the weeks ending April 11, 18, and 25; and \$467.00 for the week ending May 2, 2020. The total amount of benefits paid to date is \$2,239.00.

Because the administrative law judge affirms the decision finding claimant ineligible for benefits, the claimant has been overpaid benefits in the amount of \$2,239.00. 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.

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...

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of five weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 2, 2020. The total amount of FPUC benefits paid to date is \$3,000.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$3,000.00. Claimant is required to repay those benefits.

The other issues noticed need not be addressed.

DECISION:

The decision dated May 28, 2020 (reference 01) that denied benefits is AFFIRMED.

Claimant has been overpaid benefits in the amount of \$2,239.00. 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 benefits in the amount of \$3,000.00. Claimant is required to repay those benefits.



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

July 7, 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>.