

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SADE HEAD
Claimant

APPEAL NO. 20A-UI-04175-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SLB OF IOWA LC
Employer

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary & Partial Unemployment
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Sade Head filed a timely appeal from the May 15, 2020, reference 01, decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that Ms. Head was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 3, 2020. Ms. Head participated. Karen Beard, Human Resources Manager, represented the employer. Exhibits 1, 2, A, B and C were received into evidence. The administrative law judge took official notice of the followed Agency administrative records: KCCO, DBRO and KPYX.

ISSUES:

Whether the claimant was able to work and available for work during the seven weeks between March 22, 2020 and May 9, 2020.

Whether the claimant was temporarily unemployed and/or partially unemployed during the seven weeks between March 22, 2020 and May 9, 2020.

Whether the claimant has been overpaid regular benefits.

Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sade Head is employed by SLB of Iowa, L.C., doing business as Panera Bread, as a part-time associate. Prior to the COVID-19 pandemic became a cause for concern in Iowa, Ms. Head averaged about 26.6 hours per week in the part-time employment. Ms. Head's wage for the most recent six months to a year has been \$13.00. Thus, Ms. Head's average weekly wages from the employment would total \$345.80, not including Ms. Head's share of customer tips.

Ms. Head established an original claim for unemployment insurance benefits that was effective March 22, 2020. Ms. Head established the claim at the employer's suggestion and in response

to a sharp downturn in the employer's business associated with the COVID-19 pandemic and Iowa Governor Kim Reynolds' March 17, 2020 directive that restaurants close for dine-in service. Iowa Workforce Development set Ms. Head's weekly benefit amount at \$264.00. Ms. Head made weekly claims for the seven weeks between March 22, 2020 and May 9, 2020. Ms. Head reported wages and received regular benefits as follows.

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>Benefits Paid</u>
03/28/20	208.00	122.00
04/04/20	189.00	141.00
04/11/20	130.00	200.00
04/18/20	250.00	80.00
04/25/20	85.00	245.00
05/02/20	0.00	264.00
05/09/20	0.00	264.00

The regular benefits totaled \$1,316.00. Ms. Head also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the six weeks between March 29, 2020 and May 9, 2020, for a total of \$3,600.00 in FPUC benefits.

Ms. Head's actual hours worked and actual wages during the seven weeks between March 22, 2020 and May 9, 2020 were as follows:

<u>Benefit Week End Date</u>	<u>Hours Worked</u>	<u>Wages Earned</u>
03/28/20	27.42	356.46
04/04/20	13.39	174.07
04/11/20	15.98	207.74
04/18/20	13.4	174.20
04/25/20	13.85	180.05
05/02/20	0.0	0.00
05/09/20	0.0	0.00

During the five weeks between March 22, 2020 and April 25, 2020, Ms. Head performed all the work the employer had available for her. On or about April 26, 2020, Ms. Head became aware that she had been exposed to the COVID-19 virus and discussed the matter with her supervisor, General Manager Aaron Langner. The pair determined at that time that Ms. Head needed to self-quarantine for two weeks to reduce the risk that she might spread the virus to others. Ms. Head did not contract the novel coronavirus and did not develop COVID-19. Ms. Head returned to work on May 10, 2020, following the two weeks of self-quarantine. Ms. Head discontinued her claim for unemployment insurance benefits after the benefit week that ended May 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

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:

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.

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.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code Section 96.3(3) provides:

Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.
2. Contribution rates based on benefit experience.
 - a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.
 - (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.

Regarding the benefit week that ended March 28, 2020, the evidence establishes that Ms. Head was able to work, was available work and was enjoying the regular number of hours and usual wages. Ms. Head's \$356.46 in wages earned that week exceeded her \$264.00 weekly benefit amount by more than \$15.00. Ms. Head was not partially unemployed during the week that ended March 28, 2020 and is not eligible for benefits for that week.

During the four weeks between March 29, 2020 and April 25, 2020, Ms. Head was able to work and available for work within the meaning of the law. During each of those four weeks, Ms. Head was partially unemployed. During each of those four weeks the employer had substantially less work available for Ms. Head than the employer had provided prior to COVID-19 become an issue impacting the employment. Ms. Head is eligible for benefits for each of the weeks between March 29, 2020 and April 25, 2020, provided she meets all other eligibility requirements. However, her regular benefit amount for each week would depend on her actual wages earned each week. Because Ms. Head's weekly benefit amount was set at \$264.00, wages that exceeded one-fourth of the weekly benefit amount, \$66.00, are deductible from her unemployment insurance benefits. The partial benefit eligibility amounts are as follows:

<u>Benefit Week End Date</u>	<u>Wages Earned (rounded)</u>	<u>Benefit Eligibility</u>
04/04/20	174.00	156.00
04/11/20	208.00	122.00
04/18/20	174.00	156.00
04/25/20	180.00	150.00

During the two weeks between April 26, 2020 and May 9, 2020, Ms. Head was on a two-week COVID-19 based self-quarantine following an exposure to COVID-19. In connection with the Covid-19 pandemic and passage of the Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Iowa Workforce Development published on its website a list of Covid-19-related scenarios under which a claimant would be eligible for unemployment insurance benefits. The scenarios create limited and temporary exceptions to the able and available requirements set forth at Iowa Code section 96.4(3). These scenarios included circumstances wherein the claimant is exposed to COVID-19 and thereafter is self-quarantined. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Ms. Head satisfied the able and available requirements and is eligible for benefits for the two weeks between April 26, 2020 and May 9, 2020, provided she is otherwise eligible.

In connection with the CARES Act, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers. Based on this Agency pronouncement, the employer's account will not be charged for any benefits paid to Ms. Head for the period of March 22, 2020 through May 9, 2020.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because this decision disqualifies Ms. Head for benefits for the week that ended March 28, 2020, the \$122.00 in regular benefits Ms. Head received for that week is an overpayment of benefits.

For the four weeks between March 29, 2020, the overpayment and underpayment of benefits was as follows:

<u>BWE Date</u>	<u>Benefit Eligibility</u>	<u>Benefits Paid</u>	<u>Overpayment</u>	<u>Underpayment</u>
04/04/20	156.00	141.00		15.00
04/11/20	122.00	200.00	78.00	
04/18/20	156.00	80.00		76.00
04/25/20	150.00	245.00	95	

The net overpayment for the four weeks between March 29, 2020 and April 25, 2020 was \$82.00.

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...

All of the FPUC benefits Ms. Head received were for weeks for which this decision finds her eligible for regular benefits, provided she meets all other eligibility requirements. Accordingly, Ms. Head was eligible for the \$3,600.00 in FPUC benefits she received for the six weeks between March 29, 2020 and May 9, 2020, provided she meets all other eligibility requirements.

DECISION:

The May 15, 2020, reference 01, is modified in favor of the appellant as follows. The claimant was able to work and available for work during the week that ended March 28, 2020, but was not partially unemployed during that week. The claimant is not eligible for benefits for the week that ended March 28, 2020. During the four weeks between March 29, 2020 and April 25, 2020, the claimant was able to work, was available for work, and was partially unemployed. The claimant is eligible for benefits for the four weeks between March 29, 2020 and April 25, 2020, provided she is otherwise eligible. During the two weeks between April 26, 2020 and May 9, 2020, the claimant was on a COVID-19 quarantine, satisfied the able and available requirements, and was eligible for benefits, provided she meets all other eligibility requirements. The employer's account shall not be charged for the regular benefits paid to the claimant for period of March 22, 2020 through May 9, 2020. The claimant was overpaid \$122.00 in regular benefits for the week that ended March 28, 2020. The claimant also had an \$82.00 net overpayment of regular benefits for the four weeks between March 29, 2020 and April 25, 2020. The total overpayment is \$204.00. The claimant must repay the overpaid benefits. The claimant was eligible for the FPUC benefits she received for six weeks between March 29, 2020 and May 9, 2020, provided she meets all other eligibility requirements.



James E. Timberland
Administrative Law Judge

July 6, 2020
Decision Dated and Mailed

jet/scn