

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARITY L HENAK
Claimant

DM SERVICES INC
Employer

APPEAL 20A-UI-04026-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 13, 2020, the claimant filed an appeal from the May 11, 2020, (reference 01) unemployment insurance decision that denied benefits based on a voluntary leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on June 1, 2020. Claimant participated. Employer did not register for the hearing and did not participate.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?
Was the claimant overpaid unemployment insurance benefits?
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 October 2003. Claimant works for employer as a part-time collector.

Claimant went to Florida in February 2020 and became very ill. Claimant tested positive for Influenza A. The test for COVID 19 was not available at that time.

Claimant tried to go back to work. Claimant had a lingering cough. Claimant's co-workers complained. Employer put up a note stating that employees should not come to work if they have symptoms of COVID 19. Therefore, claimant's last day of work was March 22, 2020.

Claimant had a lingering cough for months after the illness. Claimant's medical provider said she might have those symptoms for up to five months after the initial illness. Claimant has also had a fever on and off for the past few months.

Employer offered claimant a computer and keyboard to work from home. However, claimant would have been responsible for supplying Internet. That was not a financially viable offer for claimant. Therefore, employer instead allowed claimant a voluntary leave of absence.

As of June 1, 2020, claimant is taking a voluntary layoff until November 2020 due to a slowdown in work.

Since filing this claim for unemployment insurance benefits, claimant has received \$640.00 for the five weeks ending May 2, 2020. Claimant has also received \$3,000.00 in Federal Pandemic Unemployment Compensation (FPUC) for the five weeks ending May 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

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.

Here, claimant was off work due to a health condition that had symptoms similar to COVID 19. Employer offered claimant the option to work from home, but claimant declined due to the cost of Internet access. Employer agreed to allow claimant time off work instead. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20.

Claimant is considered to be on a leave of absence due to a health condition similar to COVID 19 and the preference of not working from home because of the cost of Internet. Claimant is not considered able to and available for work and is not eligible for regular, state-funded unemployment insurance benefits.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

Since the claimant is not eligible to receive regular, state-funded unemployment insurance benefits, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 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.

Since the claimant is not eligible for regular, state-funded unemployment insurance benefits effective March 29, 2020, claimant was overpaid \$640.00 in regular, state-funded unemployment insurance benefits. Claimant is required to repay those benefits.

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

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...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, claimant also received an additional \$3,000.00 in FPUC benefits for the five weeks ending May 2, 2020. Claimant is required to repay those benefits.

DECISION:

The May 11, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant is on a voluntary leave of absence. Claimant was overpaid \$640.00 in state-funded benefits for the five weeks ending May 2, 2020. Claimant was overpaid \$3,000.00 in FPUC benefits for the five weeks ending May 2, 2020. Claimant will have to repay these benefits, **unless she applies for and is approved for PUA by following the instructions below.**

REMAND:

The issue of whether claimant is laid off and eligible for regular, state-funded unemployment insurance benefits effective June 1, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



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

June 22, 2020
Decision Dated and Mailed

cal/scn

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>.