

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KELSEY FEIKERT**

Claimant

**TEAM STAFFING SOLUTIONS INC**

Employer

**APPEAL NO. 20A-UI-04344-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**

**Claimant: Respondent (2/R)**

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Iowa Code Section 96.4(3) – Able & Available

Iowa Admin. Code r. 871-24.22(2)(j) & 871-24.23(10) – Leave of Absence

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:**

The employer filed a timely appeal from the May 11, 2020, reference 01, decision that allowed benefits effective March 22, 2020, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on June 16, 2020. Claimant Kelsey Feikert did not provide a telephone number for the hearing and did not participate. Sarah Fiedler, Risk Manager, represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

The administrative law judge notes that this matter was initially set for hearing on June 5, 2020. The hearing notice for June 5, 2020 proceeding was mailed to the parties' last-known addresses of record on May 26, 2020. The claimant did not respond to the May 26, 2020 hearing notice. The hearing notice regarding the June 16, 2020 rescheduled hearing was mailed to the parties' last-known addresses of record on June 5, 2020. The claimant did not response to the June 5, 2020 hearing notice.

**ISSUES:**

Whether the claimant has been able to work and available for work since she established the claim for benefits that was effective March 22 2020.

Whether the claimant has been temporarily laid off since she established the claim that was effective March 22, 2020.

Whether the claimant has been overpaid regular benefits.

Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelsey Feikert began her employment with Team Staffing Solutions, Inc. in November 2019. At that

time, Ms. Feikert began a full-time, temp-to-hire work assignment as a fabricator/production assembler at Siemens. Siemens manufactures wind turbines. The nature of work required that Ms. Feikert be physically present at the Siemens facility to perform her work duties. The work hours were 6:00 a.m. to 4:00 p.m., Monday through Friday. The assignment included Saturday overtime work as needed.

Ms. Feikert last performed work in the Siemens assignment on March 21, 2020. In March, Ms. Feikert communicated a need to be away from the employment due to a COVID-19 related loss of childcare. Though Siemens and Team Staffing continued to have full-time work available for Ms. Feikert, they approved a leave of absence. Siemens communicated an expectation that Ms. Feikert would report her continued need to be away from the assignment by calling the absence reporting line. Ms. Feikert did not contact Siemens to communicate a continued need to be away from the assignment.

Ms. Feikert did not return to the Siemens assignment or to the employment at Team Staffing Solutions. On April 3, 2020, Ms. Feikert notified Team Staffing Solutions that she needed to be away from the assignment until April 20, 2020. On April 16, 2020, Ms. Feikert sent a text message to Team Staffing indicating that she would not be returning until April 30, 2020. Ms. Feikert did not return on April 30, 2020 and initiated no further contact with Team Staffing. On May 7, 2020, Siemens sent a broadcast text message to workers, including Ms. Feikert, to let them know that all workers who were off work due to a COVID-19 lack of childcare were expected to return to work by June 1, 2020. On May 27 or 28, 2020, Team Staffing Account Manager Casey Nichols contacted Ms. Feikert to discuss the expectation that Ms. Feikert would report back to the Siemens assignment no later than June 1, 2020. Ms. Feikert advised Ms. Nichols that she would return June 1, 2020. However, Ms. Feikert did not return to the assignment on June 1, 2020.

Ms. Feikert established an original claim for unemployment insurance benefits that was effective March 22, 2020. Ms. Feikert reported that she had one dependent. Iowa Workforce Development set Ms. Feikert's weekly benefit amount at \$411.00. Ms. Feikert's base period consists of the fourth quarter of 2018 and the first, second and third quarters of 2019. Team Staffing Solutions is not a base period employment for purposes of the claim year that began on March 22, 2020. Ms. Feikert made consecutive weekly claims for the 12 weeks between March 22, 2020 and June 13, 2020 and received \$4,762.00 in regular benefits for that period. Ms. Feikert also received \$6,600.00 in Federal Pandemic Unemployment Compensation for 11 weeks between March 29, 2020 and June 13, 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. 871-24.23(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.

Iowa Admin. Code r. 871-24.22(2)(j) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

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 96.19(38)(c).

In response to the economic impact of COVID-19, 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. These scenarios create limited and temporary exceptions to the able and available requirements set forth at Iowa Code section 96.4(3). These scenarios include circumstances wherein the claimant experiences a lack of childcare in connection with a COVID-19 related school closure. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Ms. Feikert has not met the able and available requirements since she established the March 22, 2020 original claim and is not eligible for benefits for the period beginning March 22, 2020. Ms. Feikert was on a leave of absence that she requested and that employer approved

for the period of March 22, 2020 through May 31, 2020. Ms. Feikert presented no evidence to meet her burden of proving, by a preponderance of the evidence, that she was able to work, available for work, or that her leave of absence was based on a COVID-19 related school closure or some other COVID-19 related exception to the able and available requirements. The employer continued to have full-time work available to Ms. Feikert during the approved leave period and Ms. Feikert was at no time laid off from the employment or from the assignment. Ms. Feikert failed to return from the leave of absence on June 1, 2020, after the leave period. Ms. Feikert has presented no evidence to prove that she met the able and available requirements subsequent to her failure to return to the assignment on June 1, 2020. Benefits are denied effective March 22, 2020. The able and available disqualification applies for the period of March 22, 2020 through June 13, 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 the claimant for benefits for the period of March 22, 2020 through June 16, 2020, the \$4,762.00 in regular benefits she received for that period are an overpayment of benefits that the claimant must repay.

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, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$6,600.00 in FPUC benefits the claimant received for 11 weeks

between March 22, 2020 and June 13, 2020 are an overpayment of benefits. The claimant must repay the benefits.

This matter will be remanded to the Benefits Bureau for adjudication of the separation from the employment and for determination of whether the claimant has been able to work and available for work for the period beginning June 14, 2020.

**DECISION:**

The May 11, 2020, reference 01, decision is reversed. The claimant did not demonstrate that she was able to work, available for work, or that she was exempt from those requirements based on a recognized COVID-19 exemption. The claimant was on an approved leave of absence for the period of March 22, 2020 through May 31, 2020. The claimant failed to return from the leave of absence on June 1, 2020. Benefits are denied for the period of March 22, 2020 through June 13, 2020. The claimant is overpaid \$4,762.00 in regular benefits for the period of March 22, 2020 through June 13, 2020. The claimant is overpaid \$6,600.00 in Federal Pandemic Unemployment Compensation for the period of March 29, 2020 through June 13, 2020. The claimant must repay the state and federal benefits.

This matter is remanded to the Benefits Bureau for adjudication of the separation from the employment and determination of whether the claimant has been able to work and available for work for the period beginning June 14, 2020.

*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, 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>.



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James E. Timberland  
Administrative Law Judge

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July 1, 2020  
Decision Dated and Mailed

jet/mh