

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**BABYTER A KUMAZA HUNGBEKE**  
Claimant

**APPEAL NO. 20A-UI-04307-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VIBRANT LLC**  
Employer

**OC: 04/12/20**  
**Claimant: Appellant (5/R)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits  
Public Law 116-136 – Federal Pandemic Unemployment Compensation  
Iowa Code Section 96.(7) – Recovery of Overpaid Benefits  
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Babyter Kumaza Hungbeke filed a timely appeal from the May 20, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Ms. Kumaza Hungbeke had requested and been granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on June 4, 2020. Ms. Kumaza Hungbeke participated. Kit Baloun represented the employer. Togo-English interpreter Joyce Edem of CTS Language Link assisted with the appeal hearing. The administrative law judge took official notice of the following Agency's administrative records: KCCO, DBRO, and KPYX. Exhibit A was received into evidence.

The administrative law judge left the hearing record open for the limited purpose of allowing the employer and the claimant the opportunity to submit pay records regarding moneys paid the claimant for the period beginning April 12, 2020. Both parties submitted pay records. The claimant submitted earnings statements dated 03/16/2020, 04/01/2020, 04/16/2020 (two records), and 05/01/20, which materials were received into evidence as Exhibit B. The claimant also submitted a May 5, 2020 letter/memorandum from Amanda Marean, which letter was received into the hearing record as Exhibit C. The claimant also submitted a copy of the May 14, 2020, reference 99, notice regarding Federal Pandemic Unemployment Compensation, which document was received into evidence as Exhibit D. Ms. Kumaza Hungbeke also submitted an email message stating that the \$729.27 earnings statement is accurate, which email was received into the hearing record as Exhibit E. The employer submitted earnings statements dated 04/01/2020, 04/16/2020 (2 records), and 05/01/2020, which materials were received into the hearing record as Exhibit 1.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant was overpaid regular state unemployment insurance benefits.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC).

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Babyter Kumaza Hungbeke is employed by Vibrant, L.L.C. as a part-time caregiver. Ms. Kumaza began the employment on December 27, 2019 and last performed work for the employer on April 7, 2020. The work involves providing personal assistance to clients in the clients' homes. Ms. Kumaza Hungbeke's work hours vary from week to week, but the weekly average is about 22 hours. Ms. Kumaza's wage is \$12.00 an hour. Based on that average number of hours and the weekly wage, Ms. Kumaza's average weekly wages from the employment are about \$264.00.

Ms. Kumaza Hungbeke is the single-parent mother of four school-aged children who range in age from seven years old to 14 years old. Ms. Kumaz Hungbeke's family was impacted by the Covid-19 related shutdown of Des Moines schools in March 2020. The school shutdown created a sudden need for childcare during the hours when the children would ordinarily be at school.

On April 8, 2020, the employer notified employees that the employer would provide expanded family and medical leave and sick pay to employees pursuant to the Families First Coronavirus Response Act (FFCRA). On April 9, 2020, Ms. Kumaza Hungbeke applied for a Covid-19 related leave of absence from the employment based on the school closure and her lack of alternative childcare. The employer approved Ms. Kumaza Hungbeke for a Covid-related extended leave of absence (EFML) and Ms. Kumaza Hungbeke immediately commenced a paid leave of absence. Aside from completing a two-hour online training on May 19, 2020, Ms. Kumaza Hungbeke has not performed additional work for the employer since April 7, 2020. Ms. Kumaza received her regular wage for the two-hour training. The employer has continued to have the same work available for Ms. Kumaza Hungbeke and expects Ms. Kumaza Hungbeke to return to the employment when her family situation allows.

Ms. Kumaza Hungbeke has provided a May 5, 2020 letter that Amana Marean, Co-founder/CEO of Vibrant Homecare wrote on behalf of Ms. Kumaza Hungbeke. The letter includes the following:

Effective 4/8/2020 Babyter is on an extended FMLA until COVID-19 is less threatening for her and her family and she is able to obtain childcare. This is paid leave [sic] provided through the CARES ACT [sic]. Babyter qualifies for this leave due to not having school/daycare for her children due to COVID-19. Because her hours vary, Vibrant used her average daily hours to calculate her weekly benefit amount. Her average daily hours is [sic] 4.39 in an average workday, which equates to 21.95 hours per week. She is paid 2/3 of this amount per the CARES act [sic] reason for qualifying (take care of others).

The employer has paid and continues to pay FFCRA Expanded Family and Medical Leave (EFML) benefits as a wage substitute to Ms. Kumaza Hungbeke. Though the employer pays twice monthly, the EFML payments amount to \$176.48 per week for each week beginning April 12, 2020. The employer also provided Ms. Kumaza Hungbeke with \$444.00 in sick pay for the pay period of April 16, 2020 through April 30, 2020 pursuant to the FFCRA.

Ms. Kumaza Hungbeke established an original claim for benefits that was effective April 12, 2020. Ms. Kumaza Hungbeke made weekly claims for the seven weeks between April 12, 2020 and May 30, 2020. Iowa Workforce Development set Ms. Kumaza Hungbeke's weekly benefit

amount at \$100.00. Ms. Kumaza Hungbeke reported wages and received regular state benefits as follows:

| <u>Benefit Week End Date</u> | <u>Wages Reported</u> | <u>State Benefits Paid</u> |
|------------------------------|-----------------------|----------------------------|
| 04/18/20                     | 0.00                  | 100.00                     |
| 04/25/20                     | 0.00                  | 100.00                     |
| 05/02/20                     | 0.00                  | 100.00                     |
| 05/09/20                     | 148.00                | 0.00                       |
| 05/16/20                     | 360.00                | 0.00                       |
| 05/23/20                     | 300.00                | 0.00                       |
| 05/30/20                     | 194.00                | 0.00                       |

Iowa Workforce Development also paid \$1,800.00 in Federal Pandemic Unemployment Compensation to Ms. Kumaza Hungbeke for the three weeks between April 12, 2020 and May 2, 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(8) and (10) provide:

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

...

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

...

(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.

In response to the Covid-19 pandemic and pursuant to Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Iowa Workforce Development has published a list of temporary exemptions related to the able and available requirements. These include circumstances wherein a parent who is unable to work remotely needs to remain home to care for school-age children due to a Covid-19 related school closing and an associated lack of childcare. See COVID-19 SCENARIOS & BENEFITS CHART, <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Under this temporary exemption to the able and available requirements, the administrative law judge concludes that Ms. Kumaza Hungbeke's need to be away from work to care for her school-aged children in connection with the Covid-19 related Des Moines school closing would not prevent her from meeting the able and available requirement for the period of April 12, 2020 through May 30, 2020.

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.

Under Iowa Code section 96.7(2)(a), the employer's account may not be assessed for state benefits paid to Ms. Kumaza Hungbeke for the period beginning April 12, 2020, because the employer had continued to have the same work available for her. In addition, In response to the Covid-19 pandemic and pursuant to Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Iowa Workforce Development has published an announcement that employer's accounts will not be charged for claims directly or indirectly related to the Covid-19 pandemic. See Information for Employers, <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>.

The next question is whether \$100.00 in state benefits that Ms. Kumaza Hungbeke received for the weeks that ended April 18, April 25, and May 2, 2020 is an overpayment of benefits. 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.

Iowa Administrative Code rule 871-24.13(3) provides:

Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

- a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.
- b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).

The FFCRA payments Ms. Kumaza Hungbeke has received for each week since commenced her paid leave of absence and since she established her original claim for unemployment insurance benefits are fully deductible from unemployment insurance benefits. The FFCRA pay Ms. Kumaza Hungbeke has received for each week since she established her unemployment insurance claim has consistently exceeded her \$100.00 weekly benefit amount, reducing her unemployment insurance benefit eligibility to zero. Accordingly, Ms. Kumaza Hungbeke is not eligible for benefits for any of the weeks between April 12, 2020 and May 30, 2020. The \$300.00 in regular state benefits that she received for three weeks between April 12, 2020 and May 2, 2020 is an overpayment of benefits that Ms. Kumaza-Hungbeke 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 Ms. Kumaza Hungbeke is not eligible for regular benefits for the three weeks between April 12, 2020 and May 2, 2020 due to her receipt of FFCRA benefits that exceeded her weekly benefit amount, she is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC) for those same three weeks. The \$1,800.00 in Federal Pandemic Unemployment Compensation that Ms. Kumaza Hungbeke received for the three weeks between April 12, 2020 and May 2, 2020 is an overpayment of benefits that Ms. Kumaza Hungbeke must repay.

**DECISION:**

The May 20, 2020, reference 01, decision is modified as follows. Under a Covid-19 related exemption to the able and available requirements, the claimant met the able and available requirements during the period of April 12, 2020 through May 30, 2020 and would be eligible for benefits for that period, if she met all other eligibility requirements. However, the claimant was not in fact eligible for benefits for any of the weeks between April 12, 2020 and May 30, 2020 because she received FFCRA payments that were fully deductible from her unemployment insurance benefits on a dollar-for-dollar basis and the FFCRA benefits exceeded the weekly state unemployment insurance benefit amount. The claimant is overpaid \$300.00 in benefits for the three weeks between April 12, 2020 and May 2, 2020. The claimant is overpaid \$1,800.00 in FPUC benefits for the three weeks between April 12, 2020 and May 2, 2020. The claimant must repay the overpaid state and federal benefits.



---

James E. Timberland  
Administrative Law Judge

---

June 29, 2020  
Decision Dated and Mailed

jet/sam