

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BOBBY J MYERS

Claimant

APPEAL 20A-UI-12837-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENGINEERED WELDING INC

Employer

OC: 07/05/20

Claimant: Respondent (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the October 8, 2020 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits effective July 5, 2020 due to a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2020. The claimant, Bobby J. Myers, did not participate. The employer, Engineered Welding, Inc., participated through witnesses Gary Block and Karen Block. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?
Is the claimant overpaid benefits?
Is the claimant overpaid 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 this employer on September 12, 2018. He last worked as a full-time welder on August 28, 2020. He is currently laid off due to lack of work at this time.

From July 5, 2020 through August 28, 2020, the employer had full-time work available to the claimant. There were weeks that the claimant did not work full-time; however, that was due to him not being able to and available for work. Effective August 29, 2020, the claimant was totally laid off from this employer due to lack of work.

Claimant's administrative records establish that he has received regular unemployment insurance benefits of \$440.00 between July 5, 2020 and August 29, 2020. For the week-ending August 8, 2020, the claimant received \$158.00 in benefits; for the week-ending August 15, 2020, the claimant received \$166.00 in benefits; and for the week-ending August 22, 2020, the claimant received \$116.00 in benefits. Claimant received \$0.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits during this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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", subparagraph (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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) 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.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. 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 § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (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.

(emphasis added).

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

From July 5, 2020 through August 29, 2020, the employer had full-time work available to the claimant. The days that claimant was not at work due to personal reasons is not considered a layoff due to lack of work. Otherwise, the claimant was working to such an extent that removed him from the labor market. As such, benefits are denied from July 5, 2020 through August 29, 2020 as the claimant was not able to and available for full-time work and was not laid off due to lack of work.

Effective August 30, 2020, the claimant has been laid off due to lack of work. He has been totally unemployed effective August 30, 2020; however, his total unemployment has lasted more than four weeks as provided for in Iowa Code § 96.19(38). Benefits are allowed effective August 30, 2020, provided the claimant is otherwise eligible.

Because benefits were denied from July 5, 2020 through August 29, 2020, the issue of overpayment must be addressed.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant received

benefits from July 5, 2020 through August 29, 2020 but has been subsequently determined to be ineligible for those benefits as he was not able to and available for work. As such, the claimant is overpaid regular unemployment insurance benefits of \$440.00 from July 5, 2020 through August 29, 2020 and must repay the agency those benefits.

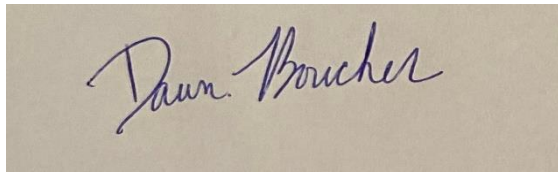
No Federal Pandemic Unemployment Compensation (FPUC) benefits were paid to the claimant during the period of July 5, 2020 through August 29, 2020, as such, the issue of overpayment of FPUC benefits is moot.

DECISION:

The October 8, 2020 (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant was not laid off from July 5, 2020 through August 29, 2020. Claimant was not able to and available for work from July 5, 2020 through August 29, 2020. Benefits are denied from July 5, 2020 through August 29, 2020.

The claimant was laid off due to lack of work effective August 30, 2020. Unemployment insurance benefits funded by the State of Iowa are allowed effective August 30, 2020, provided the claimant remains otherwise eligible.

The claimant has been overpaid regular unemployment insurance benefits of \$440.00 for the weeks between July 5, 2020 and August 29, 2020 and is obligated to repay the agency those benefits.



Dawn Boucher
Administrative Law Judge

December 23, 2020
Decision Dated and Mailed

db/mh

Note to Claimant

This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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.

If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.

- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.