

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABIGAIL J SELTZ
Claimant

FAMILIES FIRST COUNSELING SERVICES
Employer

APPEAL 20A-UI-06118-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/19/20
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, Families First Counseling Services, filed an appeal from the June 12, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2020. The claimant, Abigail J. Seltz, participated personally. The employer participated by writing only (Employer Exhibit 1).

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

- Is the claimant eligible for total or partial 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: The claimant filed her claim with an effective date of April 19, 2020, in response to COVID-19. She has a weekly benefit amount of \$538.00.

The claimant is employed full-time as a behavioral health and intervention specialist care coordinator. The claimant’s job duties involve face-to-face appointments and in light of COVID-19, the only way she could complete her visits with clients was if a client consented to participating via tele-health or telephonically. At the time the claim was filed, the claimant was

unsure how many clients would participate. Each week that the claimant has made a weekly continued claim for benefits, she has earned \$720.00-\$750.00 in wages from the employer.

The administrative record reflects that claimant has not received unemployment benefits or Federal Pandemic Unemployment Compensation (FPUC) since filing her claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

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".

(emphasis added).

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.

(Emphasis added)

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

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).

In this case, the claimant earned wages in excess of her weekly-benefit amount, plus fifteen dollars for each week since establishing her claim for benefits with an effective date of April 19, 2020. Because the claimant has earned wages in excess of her weekly-benefit amount, plus fifteen dollars, she cannot be considered partially unemployed for those weeks. Iowa Code 96.19(38) and Iowa Admin. Code r. 871-24.18. Benefits are denied from May 3, 2020 through May 30, 2020. Because no benefits were paid during those weeks, the issue of overpayment is moot.

The last issue to address is the claimant's eligibility for Federal Pandemic Unemployment Compensation (FPUC).

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 the claimant from receiving Federal Pandemic Unemployment Compensation (FPUC).

Note to Claimant: This decision denies 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>.

DECISION:

The June 12, 2020 (reference 01) decision is modified in favor of the appellant. Claimant was earning wages in excess of her weekly-benefit amount plus fifteen dollars and therefore is not partially unemployed or otherwise eligible for benefits. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

The overpayment issue is moot.

The claimant is not eligible for Federal Pandemic Unemployment Compensation (FPUC).



Jennifer L. Beckman
Administrative Law Judge
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July 31, 2020
Decision Dated and Mailed

jlb/scn