

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

APRIL M STAMPER
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 20A-UI-05492-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (4R)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On June 8, 2020, April Stamper (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 3, 2020 (reference 01) that denied benefits.

A telephone hearing was held on July 7, 2020. The parties were properly notified of the hearing. Claimant participated personally. Des Moines Ind Community Sch Dist (employer/respondent) participated by Benefits Specialist Rhonda Wagoner.

Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?
- IV. Was the claimant overpaid benefits?
- V. 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 on January 20, 2017. Claimant is still employed by employer. Claimant is employed part-time as an assistant enrichment leader for metro kids before and after school program. Claimant worked 27.5 hours per week in this position.

The last time claimant performed work for employer was March 13, 2020. Schools closed at that time due to the pandemic. However, claimant continued to be paid her salary during this time and until the end of the term on May 29, 2020. Claimant's weekly earnings were \$432.57.

Claimant hoped to work for summer programs as she had in the past. These programs are not guaranteed work; employees apply for hire for these programs each year. Claimant was not hired for these programs, as they either were not held or were only offered to full-time staff due to low enrollment.

Rather than reporting her weekly earnings of \$432.57 each week she claimed benefits, claimant reported what she earned after taxes. Claimant reported earning \$356.00 for the benefit week ending April 4, 2020. For each benefit week after that through the week ending May 30, claimant reported earning \$334.00. Claimant reported no earnings after that time. Claimant's weekly benefit amount is \$328.00.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$76.00 for a total of seven weeks, from the benefit week ending April 11, 2020 and continuing through the benefit week ending May 23, 2020. The total amount of benefits paid to date is \$532.00.

The unemployment insurance system shows claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of seven weeks. The total amount of FPUC benefits paid to date is \$4,200.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the Iowa Workforce Development decision dated June 3, 2020 (reference 01) that denied benefits is MODIFIED in favor of appellant. Claimant was not unemployed from the benefit week ending April 4, 2020 through the benefit week ending May 30, 2020. Claimant was totally unemployed after that point. However, this matter must be remanded to determine whether claimant had reasonable assurance of employment in the ensuing academic year or term.

Iowa Code section 96.19(38) provides:

"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 section 96.4(5)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.1A, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

Claimant was not unemployed from the benefit week ending April 4, 2020 through the benefit week ending May 30, 2020, as she was still employed and earned more than her weekly benefit amount plus \$15.00. She is not eligible for benefits during this time. Claimant was totally unemployed after that point. However, this matter must be remanded to determine whether claimant had reasonable assurance of employment in the ensuing academic year or term. If she had reasonable assurance, she was not eligible for benefits after that point either.

Iowa Code section 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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$76.00 for a total of seven weeks, from the benefit week ending April 11, 2020 and continuing through the benefit week ending May 23, 2020. The total amount of benefits paid to date is \$532.00.

Because the administrative law judge finds claimant ineligible for benefits through May 30, 2020, the claimant has been overpaid benefits in the amount of \$532.00. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

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...

The unemployment insurance system shows claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of seven weeks. The total amount of FPUC benefits paid to date is \$4,200.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$4,200.00. Claimant is required to repay those benefits.

DECISION:

The Iowa Workforce Development decision dated June 3, 2020 (reference 01) that denied benefits is MODIFIED in favor of appellant. Claimant was not unemployed from the benefit week ending April 4, 2020 through the benefit week ending May 30, 2020. Claimant was totally unemployed after that point.

Claimant has been overpaid benefits in the amount of \$532.00. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

Claimant has been overpaid FPUC benefits in the amount of \$4,200.00. Claimant is required to repay those benefits.

REMAND:

This matter is remanded to the Benefits Bureau for an initial investigation and determination on whether claimant had reasonable assurance of employment in the ensuing academic year or term.



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

July 20, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.