

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREW J STUELKE
Claimant

SLB OF IOWA LC
Employer

APPEAL NO. 20A-UI-03756-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Partial & Temporary Unemployment
Iowa Code Section 96.7(2)(a)(2) – Employer Liability
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 April 30, 2020, reference 01, decision allowed benefits to the claimant effective March 15, 2020, provided he was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily and/or partially unemployed. The decision also held that the employer's account could be charged for benefits. After due notice was issued, a hearing was held on May 26, 2020. Claimant Andrew Stuelke did not provide a telephone number where he could be reached for the appeal hearing and did not participate. Karen Beard, Human Resources Manager, represented the employer. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KCCO and WAGEA.

ISSUES:

Whether the claimant has been able to work and available for work since March 15, 2020.
Whether the claimant has been temporarily and/or partially unemployed since March 15, 2020.
Whether the employer's account may be charged for regular benefits for the period beginning March 15, 2020.
Whether the claimant was overpaid regular state 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: Andrew Stuelke is employed by SLB of Iowa, L.C., doing business as Panera Bread, as a full-time Associate at the employer's restaurant on Elwood Drive in Cedar Rapids. Since September 18, 2019, Mr. Stuelke's hourly wage has been \$12.70. Prior to the COVID-19 pandemic becoming a cause for concern in Iowa, Mr. Stuelke's weekly work hours averaged 31 to 35 hours per week. This corresponded to average weekly wages of \$393.70 to \$444.50.

Mr. Stuelke established an original claim for benefits that was effective March 15, 2020. Mr. Stuelke's claim was in response to a sharp downturn in the employer's business associated with the COVID-19 pandemic and Iowa Governor Kim Reynolds' March 17, 2020 directive that restaurants close for dine-in service. Iowa Workforce Development set Mr. Stuelke's weekly benefit amount at \$331.00. Since Mr. Stuelke filed his claim, he has worked all of the work hours the employer has had available for him and has not missed any work due to illness, vacations and so forth. For the period of March 15, 2020 through May 23, 2020, Mr. Stuelke reported wages and received weekly benefits as follows:

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>Regular Benefits Paid</u>
03/21/20	208.00	205.00
03/28/20	324.00	89.00
04/04/20	289.00	124.00
04/11/20	188.00	225.00
04/18/20	402.00	0.00
04/25/20	532.00	0.00
05/02/20	383.00	0.00
05/09/20	190.00	223.00
05/16/20	4.00	331.00
05/23/20	4.00	331.00

By the time of the May 26, 2020 appeal hearing, Iowa Workforce Development had also paid \$600.00 in Federal Pandemic Unemployment Compensation to Mr. Stuelke for the weeks that ended April 4, April 11, May 9, and May 16, 2020, for a total of \$2,400.00 in FPUC. On May 27, 2020, Iowa Workforce Development paid an additional \$600.00 in FPUC benefits to Mr. Stuelke for the week that ended May 23, 2020.

Mr. Stuelke's actual weekly work hours and wages since March 15, 2020 have been as follows.

<u>Benefit Week End Date</u>	<u>Work hours</u>	<u>Wages</u>
3/21/20	Not Available	Not Available
3/28/20	18.57	235.84
4/4/20	20.77	263.78
4/11/20	14.82	188.21
4/18/20	31.74	403.10
4/25/20	36.01	457.33
5/02/20	30.24	384.05
5/09/20	15.02	198.37
5/16/20	31.98	406.15
5/23/20	29.25	371.48

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(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code Section 96.3(3) provides:

Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

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.

The weight of the evidence in the record establishes that Mr. Stuelke was able to work and available for work for each of the weeks between March 15, 2020 and May 23, 2020. The evidence further indicates that Mr. Stuelke was partially unemployed during the benefit weeks that ended March 21, March 28, April 4, April 11, and May 9, 2020. During each of those weeks, Mr. Stuelke was receiving fewer than the usual number of weekly work hours and his wages did not exceed his \$331.00 weekly benefit amount by more than \$15.00. Mr. Stuelke was not partially unemployed during the weeks that ended April 18, April 25, May 2 and May 16, 2020. During those weeks, Mr. Stuelke worked his normal range of work hours and his weekly wages exceeded his \$331.00 weekly benefit amount by more than \$15.00. During the week that ended May 23, 2020, Mr. Stuelke worked slightly less than his normal range of work hours. However, his wages for the week that ended May 23, 2020 exceeded his \$331.00 weekly benefit amount by more than \$15.00. Based on the earned wages, Mr. Stuelke was not partially unemployed during the week that ended May 23, 2020. Mr. Stuelke is not eligible for benefits for the weeks that ended April 18, April 25, May 2, May 16, and May 23, 2020.

In response to the negative economic impact of the COVID-19 pandemic on Iowa's economy, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers. Based on this Agency pronouncement, the employer's account will not be charged for benefits paid to Mr. Stuelke in connection with the COVID-19 based claim for the period beginning March 15, 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 Mr. Stuelke for benefits for the weeks that ended May 16 and May 23, 2020, the \$662.00 in regular benefits that Mr. Stuelke received for those two weeks is an overpayment of benefits that Mr. Stuelke 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 Mr. Stuelke is disqualified from receiving regular unemployment insurance (UI) benefits for the weeks that ended May 16 and May 23, 2020, he is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC) for those two weeks. The \$1,200.00 in FPUC benefits that Mr. Stuelke received for the two weeks between May 10, 2020 and May 23, 2020 is an overpayment of benefits that Mr. Stuelke must repay.

The administrative law judge takes this opportunity to remind Mr. Stuelke that misrepresenting his wages on his unemployment insurance claim could be deemed fraud and could subject him to legal consequences over and above repayment of overpaid benefits. Mr. Stuelke must accurately report his gross wages earned during each Sunday-Saturday calendar week.

Due to Mr. Stuelke's misrepresentation of his weekly wages for the weeks that ended May 16 and May 23, 2020, this matter will be remanded to the Benefits Bureau for determination of whether Mr. Stuelke has been able to work, available for work, and partially unemployed for the period beginning May 24, 2020.

DECISION:

The April 30, 2020, reference 01, decision is modified in favor of the employer as follows. The claimant was able to work and available for work during the weeks between March 15, 2020 and May 23, 2020. The claimant was partially unemployed during the weeks that ended March 21, March 28, April 4, April 11, and May 9, 2020. The claimant is eligible for benefits for the weeks that ended March 21, March 28, April 4, April 11, and May 9, 2020, provided he meets all other eligibility requirements. The claimant was not partially unemployed during the weeks that ended

April 18, April 23, May 2, May 16, and May 23, 2020. Accordingly, the claimant is not eligible for benefits under a theory of partial unemployment during the weeks that ended April 18, April 23, May 2, May 16, and May 23, 2020. The claimant is overpaid \$662.00 in regular benefits for the two weeks between May 10, 2020 and May 23, 2020. The claimant is overpaid \$1,200.00 in Federal Pandemic Unemployment Compensation for the two weeks between May 10, 2020 and May 23, 2020. The claimant must repay the overpaid regular and FPUC benefits. The employer's account shall not be charged for benefits paid in connection with the COVID-19 based claim for the period beginning March 15, 2020.

Due to the claimant's misrepresentation of his weekly wages for the weeks that ended May 16 and May 23, 2020, this matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work, available for work, and partially unemployed for the period beginning May 24, 2020.



James E. Timberland
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

jet/scn