

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARLA B TROGDON
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 20A-UI-07510-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/15/20
Claimant: Respondent (2)

Iowa Code § 96.4(5) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On July 7, 2020, Des Moines Ind Community Sch Dist (employer/appellant) filed a timely appeal from the July 2, 2020 (reference 06) unemployment insurance decision that determined Marla Trogdon (claimant/respondent) was eligible to receive unemployment insurance benefits beginning June 28, 2020.

A telephone hearing was held on August 11, 2020. The parties were properly notified of the hearing. Claimant participated personally. Employer participated by Benefits Specialist Rhonda Wagoner.

Official notice was taken of the administrative record.

ISSUE(S):

Is the claimant eligible for benefits between academic years or terms?

Was the claimant overpaid benefits?

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 August 27, 2012. Claimant is still employed by employer. Claimant last worked on May 28, 2020. Summer break started June 1, 2020. Claimant was employed part-time as a general worker in the food service department. That position is only active during the school year, not during breaks and summer. Claimant has reasonable assurance of a return to work in a couple weeks. She has returned to work after each summer since beginning employment there.

Claimant does have wage credits from other employers during the base period. The high quarter for those wages is \$1,057.00 in the second quarter of 2019. Since June 28, 2020, claimant has received benefits totaling \$1,310.00 and FPUC totaling \$2,400.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the July 2, 2020 (reference 06) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits beginning June 28, 2020 is REVERSED.

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 96.19, 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.

b. Benefits based on service in any other capacity for 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 terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Admin. Code r. 871-24.52(6) provides:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

The administrative law judge finds claimant has reasonable assurance of returning to employment with employer in the same capacity during the ensuing academic year or term. As such, she is not eligible for benefits for any week of unemployment which begins during the period between the two successive academic years or terms.

Claimant does not have sufficient non-school wage credits remaining on the claim to qualify for benefits when the school wage credits are removed. Her high quarter was the second quarter of 2019, when she earned insured wages in the amount of \$1,057.00. In order to be monetarily eligible, a claimant must have at least \$1,700.00 of wages in at least one quarter in the base period.

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.

Because the administrative law judge now finds claimant ineligible for benefits during the above period, the claimant has been overpaid benefits in the amount of \$1,310.00. 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.

PL 116-136, 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 the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$2,400.00. Claimant is required to repay that amount.

DECISION:

The July 2, 2020 (reference 06) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits beginning June 28, 2020 is REVERSED. Claimant is not eligible for benefits during the summer break beginning June 1, 2020 and ending when the subsequent school year begins.

Claimant has been overpaid benefits in the amount of \$1,310.00. 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 in the amount of \$2,400.00. Claimant is required to repay that amount.



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

August 18, 2020

Decision Dated and Mailed

abd/sam

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>.