

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAITLIN H RAFTER
Claimant

APPEAL 20A-UI-03592-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 03/22/20
Claimant: Respondent (2)

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 April 20, 2020 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits and that the employer will not be relieved of charges. The parties were properly notified of the hearing. A telephone hearing was held on May 21, 2020. The claimant, Caitlin H. Rafter, did not participate. The employer, Fareway Stores Inc., participated through witness Theresa McLaughlin. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

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: Claimant started working for this employer on August 8, 2017. She is still employed to date. She works part-time as a grocery clerk. Claimant was never guaranteed a certain number of hours each week as a part-time employee. Claimant told the employer that she was unavailable to work at this time with because she lost her housing and needed to move away from the town she was residing in. Claimant was a student at Iowa State University and lost her housing when the University closed down due to the COVID 19 pandemic. Her last day worked was March 7, 2020. She told the employer she anticipates coming back to work once her housing is available. The employer does have work available for the claimant.

Claimant's administrative records establish that she has received \$1,224.00 in unemployment insurance benefits since filing her initial claim for benefits effective March 22, 2020 through May 16, 2020. Claimant has also received \$4,200.00 in Federal Pandemic Unemployment Compensation benefits from March 29, 2020 through May 16, 2020.

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(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Because claimant was hired to work only part-time hours, was not guaranteed full-time hours, and the wage history consists of only part-time wages, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continues to provide the same employment and the claimant is currently employed under the same hours and wages as contemplated when she was hired, she is not considered partially unemployed. Further, claimant has told the claimant that she is unavailable to work. Benefits are denied effective March 22, 2020 and continuing until the claimant makes herself available for work. Because benefits are denied, the issues 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 but has been subsequently determined to be ineligible for those benefits. As such, the claimant is overpaid unemployment insurance benefits of \$1,224.00 from March 22, 2020 through May 16, 2020 and must repay the agency those benefits.

The next issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation benefits. The administrative law judge finds that she is and that those must be repaid to the agency.

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 benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular benefits claimant received, the claimant also received an additional \$4,200.00 in Federal Pandemic Unemployment Compensation benefits from March 22, 2020 through May 16, 2020. Claimant is overpaid and required to repay those benefits as well.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, he may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"). The Pandemic Unemployment Assistance ("PUA") section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and 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

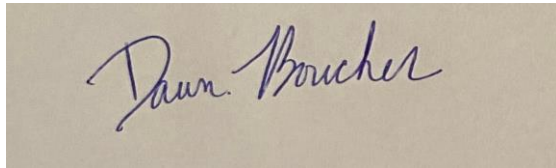
Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The April 20, 2020 (reference 01) decision is reversed. Claimant is still employed at the same hours and same wages and is therefore not unemployed. Claimant is also unavailable for work. Benefits are denied effective March 22, 2020 and continuing until the claimant is available for work.

The claimant has been overpaid regular unemployment insurance benefits of \$1,224.00 for the weeks between March 22, 2020 and May 16, 2020 and is obligated to repay the agency those benefits.

The claimant has also been overpaid Federal Pandemic Unemployment Compensation benefits in addition to regular unemployment insurance benefits. Claimant is overpaid \$4,200.00 in Federal Pandemic Unemployment Compensation benefits and is obligated to repay the agency those benefits as well.

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Dawn Boucher
Administrative Law Judge

May 26, 2020
Decision Dated and Mailed

db/mh