

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYME T LIDSAY

Claimant

APPEAL 20A-UI-11064-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC

Employer

OC: 07/19/20

Claimant: Respondent (2R)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the September 3, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 30, 2020, at 11:00 a.m. Claimant did not participate. Employer participated through Laura Roney, Payroll/Human Resources. Employer's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.
Whether claimant was overpaid benefits.
Whether claimant is 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 her employment with Agri Star Meat and Poultry on May 12, 2020. Claimant was employed as a full-time Shipping Laborer. Claimant's hourly wage was \$15.00.

Claimant requested time off from work from July 20, 2020 through August 2, 2020 to self-isolate due to Covid-19. Employer agreed to claimant's absence; employer did not require claimant's absence. Claimant did not receive any wages, vacation or sick pay during this absence from work. Claimant filed an initial claim for unemployment insurance benefits effective July 19, 2020. Claimant's weekly benefit amount is \$291.00.

Claimant returned to work on August 4, 2020 and worked her regular hours through August 12, 2020. Claimant was absent from work on August 13, 2020, citing personal reasons. For the week ending August 8, 2020, claimant worked 30.5 hours and earned \$457.50. For the week ending August 15, 2020, claimant worked 26.75 hours and earned \$401.25.

Claimant was absent on August 17, 2020 citing medical reasons. Claimant worked on August 18, 2020. Claimant did not return to work after August 18, 2020. For the week ending August 22, 2020, claimant worked 9.75 hours and earned \$146.25.

Claimant notified employer of her absences on August 19th, 20th and 24th, 2020. Claimant did not notify employer of her absences on August 25th, 26th, 27th and 30th, 2020. Employer attempted to contact claimant on August 28, 2020 without success. Employer terminated claimant's employment effective August 31, 2020. Employer had claimant's regular hours available for claimant since July 19, 2020.

The administrative record reflects that claimant filed for and has received regular unemployment insurance (UI) benefits in the gross amount of \$3,220.00 for 14 weeks between July 19, 2020 and October 24, 2020. In addition to regular unemployment insurance benefits, claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$600.00 for the one-week period between July 19, 2020 and July 25, 2020. Claimant has also received Pandemic Emergency Unemployment Compensation (PEUC) and Lost Wages Assistance (LWA).

The issue of claimant's separation from employment has not yet been the subject of a Benefits Bureau initial investigation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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(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. 871-24.23(1), (10) and (29) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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

Iowa Code section 96.7(2)a(2) provides:

2. 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's

employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

From July 19, 2020 through August 1, 2020, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, she is required to be able to and available for work. Claimant has the burden of proving that she was able to and available for work. Claimant was on an approved leave of absence and, thus, was not available for work. Claimant has not met her burden of proving she was able to and available for work. Therefore, claimant is not eligible for benefits.

From August 2, 2020 through August 15, 2020, claimant worked her less than her regular, full-time hours but earned more than \$306.00 per week (her weekly benefit amount plus \$15.00). Therefore, claimant is not considered partially unemployed and is not eligible for benefits.

From August 22, 2020 through August 28, 2020, claimant worked less than her regular, full-time hours and earned less than her weekly benefit amount. However, employer had claimant's regular, full-time hours available and claimant was not able or available to work those hours. Therefore, claimant is not eligible for benefits.

As of August 29, 2020, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Claimant has not met her burden of proving that she was able to and available for work. Therefore, claimant is not eligible for benefits.

The next issue to be determined is whether claimant has been overpaid benefits. For the reasons that follow, the administrative law judge concludes claimant was overpaid benefits, which must be repaid.

Iowa Code section 96.3(7) states:

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.

Benefits were paid to which claimant was not entitled. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$3,220.00 for 14 weeks between July 19, 2020 and October 24, 2020. Claimant is required to repay those benefits.

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 claimant is disqualified from receiving UI, claimant is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$600.00 for the one-week period between July 19, 2020 and July 25, 2020. Claimant is required to repay those benefits.

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The September 3, 2020 (reference 01) unemployment insurance decision is reversed. When claimant was totally unemployed, she was not able to or available for work. When claimant was partially unemployed, she earned excessive wages or was not able or available to work. Therefore, claimant is not eligible for benefits. Benefits are denied effective July 19, 2020.

Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$3,220.00 for 14 weeks between July 19, 2020 and October 24, 2020, which must be repaid. Claimant has been overpaid Federal Pandemic Unemployment Compensation in the gross amount of \$600.00 for the one-week period between July 19, 2020 and July 25, 2020, which must be repaid.

REMAND:

The issue of whether claimant has been overpaid PEUC and LWA is remanded to the Benefits Bureau of IWD for an initial investigation and decision.

The separation issue is remanded to the Benefits Bureau of IWD for an initial investigation and decision.



Adrienne C. Williamson
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November 12, 2020
Decision Dated and Mailed

acw/mh