IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

68-0157 (9-06) - 3091078 - EI

LINDA S MILLER
Claimant

KWIK TRIP INC
Employer

APPEAL NO: 20A-UI-06613-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/05/20
Claimant: Appellant (1)

871 IAC 24.23(10) – Leave of Absence
Section 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 12, 2020, reference 01 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 27, 2020. The claimant participated in the hearing. Brian Jones, Store Leader, participated in the hearing on behalf of the employer.

ISSUES:

The issues are whether the claimant was able and available for work, whether she was on a leave of absence and whether she is overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant requested and was given a leave of absence because she had COVID-19. She was off work from April 4 through May 8, 2020, and returned to work following that date before becoming ill again for a couple weeks and being off work again. The claimant is back to work at this time.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of the claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. The claimant was one of the individuals whose funds were released pending appeal. The administrative record shows the claimant filed for and received a total of $3,006.00 in unemployment insurance benefits for the nine weeks ending June 6, 2020. She also received Federal Pandemic Unemployment Compensation in the amount of $5,400.00 for the nine weeks ending June 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able and available for work and did take a leave of absence.

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(10) provides:

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

(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.

The claimant requested and was given a leave of absence from April 4 through May 8, 2020. In order to be eligible for state unemployment benefits a claimant must be able and available for work. If the claimant is on a leave of absence she cannot be considered able and available for work. Accordingly, benefits must be denied.

The claimant received unemployment insurance benefits. This was during the period of time the claimant has been determined to be ineligible to receive benefits. This decision denies benefits. If this decision becomes final or if the claimant is not eligible for Pandemic Unemployment Assistance (PUA), she may have an overpayment of benefits.

Even though the claimant is not eligible for regular, state-funded unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the $600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant does not have to be able and available for work to be eligible for the federal unemployment programs. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 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 claimant received unemployment insurance benefits. This was during the period of time the claimant has been determined to be ineligible to receive benefits. This decision denies benefits. If this decision becomes final or if the claimant is not eligible for PUA, she may have an overpayment of benefits.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that the claimant may be overpaid those benefits.

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

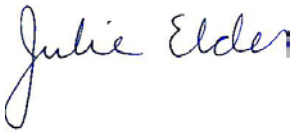
(2) Repayment.-- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency…

The claimant has been disqualified from receiving regular unemployment insurance benefits. She has also received Federal Pandemic Unemployment Compensation. If this decision becomes final or if the claimant is not eligible for PUA, she may have an overpayment of benefits.

DECISION:

The June 12, 2020, reference 01, decision is affirmed. The claimant is not able to work and available for work effective April 5, 2020. Benefits are withheld until such time as the claimant makes herself available for work to the extent she was available during the base period history and the employer has no suitable or comparable work available.

The claimant has received unemployment insurance benefits and Federal Pandemic Unemployment Compensation. This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



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Julie Elder
Administrative Law Judge

August 3, 2020
Decision Dated and Mailed

je/scn

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.