

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMUEL J VANDER VEGTE
Claimant

KASTIM CORPORATION
Employer

APPEAL 20A-UI-04403-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able and Available
871 IAC 24.24.23(26) – Same Hours and Wages – Still Employed
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

Samuel Vander Vegte (claimant) appealed a representative's May 19, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits because he is still employed with Kastim Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2020. The claimant participated personally. The employer participated by Jackie Palmer, General Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is able and available for work, whether the claimant was overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 28, 2020, as a part-time crew member. The claimant's eleven-year-old brother from Emmetsburg, Iowa, came to stay with the claimant and his fiancée in Schleswig, Iowa. The claimant called in and reported absences many days due to his brother's visit. His last day of work was May 9, 2020. On May 13, 2020, the claimant told the employer he was quitting. The claimant quit to stay home with his brother. Continued work was available had the claimant not resigned.

The claimant filed his claim for unemployment insurance benefits with an effective date of March 29, 2020. For the week ending May 9, 2020, the claimant reported he earned \$200.00. He received partial unemployment insurance benefits of \$88.00. In addition to the regular unemployment insurance benefits, the claimant received an additional \$600.00 in Federal Pandemic Unemployment Compensation for the week ending May 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge finds the claimant is not able and available for work.

871 IAC 24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is spending working hours caring for a child, he is considered to be unavailable for work. The claimant did not have child care for his minor brother. He is considered to be unavailable for work.

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 \$88.00 in unemployment insurance benefits for the week ending May 9, 2020. This was during the period of time the claimant has been determined to be ineligible to receive benefits. The claimant was overpaid unemployment insurance benefits pursuant to Iowa Code Section 96.3-7 for that period.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that he is 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. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits, the claimant received an additional \$600.00 in Federal Pandemic Unemployment Compensation for the week ending May 9, 2020. The claimant is required to repay those benefits as well.

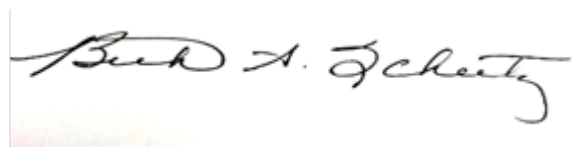
The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's May 19, 2020, decision (reference 01) is affirmed. The claimant is not able and available for work as of May 19, 2020. The claimant is overpaid unemployment insurance benefits of \$88.00. He is overpaid Federal Pandemic Unemployment Compensation of \$600.00.

The issue of the claimant's separation from employment is remanded for determination.

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 due to disqualifying separations, 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>.



Beth A. Scheetz
Administrative Law Judge

June 23, 2020
Decision Dated and Mailed

bas/scn